

**Virginia Council on Environmental Justice
2021 Annual Report**

January 13, 2021

Dear Governor-Elect Youngkin,

We congratulate you on behalf of the Virginia Council on Environmental Justice (VCEJ) and wish you a successful transition and governing administration. We have been privileged to make recommendations to the administrations of Governor McAuliffe and Governor Northam, and it is our sincere hope that you will also see this work as vital to achieving your commitment to serving Virginians as their 74th Governor.

The VCEJ is a body of diverse citizens with climate and environmental backgrounds concerned for their marginalized neighbors, many of whom are vulnerable to disproportionate impacts from pollution and environmental hazards in poor and minority communities, as well as protecting Virginia's air, water, and soil. Recommending ways for reducing carbon and other greenhouse gas emissions and achieving environmental justice for communities are central to our mission. As a codified Advisory Board, we have heard and responded to environmental justice concerns from Virginians from across the state and have learned how critical our work has been for various communities seeking information.

While the Council continues to work on these important issues, we wanted to take this opportunity to share a few recommendations for your consideration. The VCEJ recommends:

1. Virginia should remain a member of the Regional Greenhouse Gas Initiative.
2. The Commonwealth should continue to build its clean energy economy, prioritizing clean energy sources such as offshore wind and solar, with a focus on energy efficiency, transportation pollution solutions and equitable transition practices.
3. The Council strongly supports the continuation of Governor Northam's Executive Order 82: "Consultation With Federally Recognized Tribal Nations For Environmental And Historic Permits And Reviews" and the continued meaning of environment and engagement with Virginia Tribal nations.
4. The Council recommends that the General Assembly update FOIA and public meeting requirements to reflect the ability for modern technology, and enable increased access using available technology.
5. The Council strongly supports the continuation of the Environmental Justice Interagency Working group environmental justice issues throughout the Commonwealth, encouraging inter-agency collaboration and communication.
6. The Office of the Governor and Secretary of Natural and Historic Resources, along with support from state agencies, shall continue to staff and provide support to the Virginia Council on Environmental Justice.
7. Virginia must continue to prioritize and consider environmental justice in environmental laws, regulations and policy decisions.

Serving as a member of the VCEJ has been an inspiring but weighty responsibility and privilege. To share this work with members of the Secretary of Historic and Natural Resources and other agencies tasked with administering Virginia's resources has been and continues to be an honor. We look forward to meeting with you and members of your administration in the new year. We would like an opportunity to formally present to you and your staff the recommendations we have prepared from our work in 2021 since the VCEJ was established as a continuing body. This is a tradition that previous administrations have afforded to Councils such as ours to provide a forum for receiving and discussing the annual report. Also, if we can help your transition in any way, please do not hesitate to contact either co-chair.

Again, congratulations! We look forward to working with you and your administration to protect Virginia's environment.

Sincerely,

Faith Harris, MDiv., S.T.M., DMin., Co-Chair
Janet Phoenix, MD, MPH, MS, Co-Chair

Dear Governor Northam,

On behalf of the Virginia Council on Environmental Justice, it is with heart-felt gratitude and appreciation that we write to congratulate you on your historic accomplishments as Governor the past four years.

Together, we have made historic strides forward on environmental justice in Virginia. Among them are:

- Codification of EJ Council- working with advocates and legislators
- EO 6 (among others)
- Signing the EJ Act
- Joining Virginia in the Regional Greenhouse Gas Initiatives
- Establishing the DEQ Environmental Justice Office

You leave a legacy of strong leadership for achieving equity in policy and governance across state agencies. While no administration will go unchallenged by critics and friends, you navigated even the most difficult crisis of the COVID pandemic with decisive, practical, and balanced leadership solutions. No doubt many lives were saved due to your actions.

Thank you for your support and we wish you, Pam and your family well in your next chapter.

Sincerely,

Faith Harris, MDiv., S.T.M., DMin., Co-Chair
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Virginia Advisory Council on Environmental Justice Council Members

Andres Alvarez, Retired state employee

Tom Benevento, M.S., New Community Project

Theresa L. Burriss, Radford University

Karen Campblin, ktcPLAN, LLC

Kendyl Crawley Crawford, Virginia Interfaith Power & Light

Taysha DeVaughn, New Community Project

Rev. Mike Ellerbrock, Ph.D., Virginia Tech; member EPA Environmental Justice Advisory Council

Aliya Farooq, Virginia Interfaith Center for Public Policy

Faith Harris, MDiv. S.T.M, DMin, Assistant Professor, Theology Virginia Union University, Co-Director, Virginia Interfaith Power & Light

Phil Hernandez, The Commonwealth Institute for Fiscal Analysis

Ronald Howell, Virginia State University

Otis Jones, Chesapeake Bay Foundation

Kathryn MacCormick, Citizen of the Pamunkey Indian Tribe

Janet Phoenix, MD, MPH, George Washington University Milken Institute School of Public Health, Council Chairperson

Clarence Tong, Arrival Automotive

Harrison Wallace, Climate and Clean Energy Equity Fund

2021 Virginia State Government Staffing Liaisons:

Meryem Karad, Assistant Secretary of Natural and Historic Resources

Katelyn Salee, Special Assistant for Policy & Communications

for the Secretary of Natural and Historic Resources

2021 Meetings & Actions:

The Virginia Council on Environmental Justice met a total of 8 times during 2021, its first year as a newly codified gubernatorial board. The Council elected Dr. Janet Phoenix and Dr. Faith Harris as co-chairs for the 2020-2021 term.

Council membership includes representation of Virginia Tribal nations, non-governmental organizations, civil rights organizations,

The Council elected to form three subcommittees including: Just Transition, Emerging issues and Public and Community Health and Participation. The focus [add focus and mission of each committee]

The Council was represented by Kendyl Crawford and Taysha DeVaugh on the Interagency Working Group, led by the Department of Environmental Quality. As representatives, Ms. Crawford and Ms. DeVaugh participated in a total of three working group meetings and provided recommendations from the Council as part of the yearly report.

Due to COVID and restrictions around meeting requirements, leading to challenges meeting quorum and attendance. In addition,

The Council held public comment at each of their meetings, listening to proposals and community concerns from across the Commonwealth. Issues included: Coastal Resilience, Landfill

Presentations by Virginia Energy on Carbon Modeling, 2021 Gold Study, Coastal

The Council made a site visit to Wise County Virginia, led and planned by the Emerging Issues committee. At UVA

Summary of Recommendations:

1. Virginia should remain a member of the Regional Greenhouse Gas Initiative.
2. The Commonwealth should continue to build its clean energy economy, prioritizing clean energy sources such as offshore wind and solar, with a focus on energy efficiency, transportation pollution solutions and equitable transition practices.
3. The Council strongly supports the continuation of Governor Northam's Executive Order 82: "Consultation With Federally Recognized Tribal Nations For Environmental And Historic Permits And Reviews" and the continued engagement with Virginia Tribal nations.
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7. Virginia must continue to prioritize and consider environmental justice in environmental laws, regulations and policy decisions.

SECTION: Committee on Recs:

- Committee names
- Issues discussed
- Recommendations readdressed with details
- Next steps/topics for 2022

SECTION: Closing Statement:

- Thank you to Northam
 - Administration accomplishments: codification, eo, inclusion in coastal
- 2022 Overview: 6 meeting starting

SECTION: Appendix

- By section
- Public comments

Infrastructure & Just Transition Committee

Chapter Outline:

(1) Regional Greenhouse Gas Initiatives

The Regional Greenhouse Gas Initiative (RGGI) is a multi-state carbon trading market that puts a market-based price on carbon emissions coming from large power plants. Virginia joined this program through both legislation and state citizen board rulemaking in 2020. The program has generated \$228M in revenue in one year: half of that money will be used to fund energy efficiency programs for low-income Virginians, 45% of that money will be used for flooding mitigation, and the remaining 5% will cover operating costs and allow for the Department of Environmental Quality (DEQ) to hire more staff to work on climate mitigation.

As Virginians face a higher than average energy burden and the growing threat of sea level rise with over one million people living in coastal Virginia, the need for the revenue from the program has never been greater. Also, the program will highlight the elevated social cost of carbon emissions, making way for cleaner sources of energy to penetrate the market and create healthier and more sustainable communities.

EPA released a report (Sep 2021) documenting that “Socially Vulnerable Populations Suffer Disproportionate Impacts of Climate Change in the U.S.” Specifically: Black and African American citizens are 34% more likely to suffer childhood asthma and 40% more likely to die from extreme temperature. Hispanics and Latinos are 43% more likely to work in weather-exposed industries. A study published by the National Academy of Sciences (March 2019) on fine particle pollution documented that Hispanics are exposed to 63% more air pollution than they create and African Americans are exposed to 56% more air pollution than they create; whereas whites are exposed to 17% less air pollution than they create. These social costs are too high for Virginia’s residents.

The stated goal to drop out of RGGI (will only save VA ratepayers \$2.50/month) glosses over the regional reality of climate change and the need for collaborative multi-dimensional solutions. In the context of addressing this existential global phenomenon, it is unproductive to adopt piecemeal state-by-state solutions. Climate knows no political boundaries. In this case, for the sake of future generations, real leadership by our Commonwealth necessitates regional collaboration.

- The Council recommends continued and active participation in the RGGI and that the allocations for the revenue generated from the program remain the same as written in the Clean Energy and Community Flood Preparedness Act of 2020.

Clean Energy/Decarbonization

A Cleaner & Equitable Energy System

A cleaner energy system will provide important public health, environmental, quality of life, and economic benefits for Virginia’s most vulnerable communities, including communities of color, low-income, and other historically underserved communities. However, energy affordability remains a significant burden for many Virginians.

As New Virginia Majority recently noted in their comments to the Virginia Department of Energy, the percentage of household income spent on home energy bills varies widely from region-to-region, by race and income, and is a significant barrier to greater economic justice. The hardship imposed by energy affordability has been further exacerbated by the COVID-19 pandemic and associated economic dislocation.

In our 2020 VCEJ report, we cited a study by the Virginia Poverty Law Center called the Affordable Clean Energy Project, found that "on average Virginia households experience an already higher than average electricity burden of 3.1% compared to the national average of 2.9%. Low-income households spend an average of 8.8% of their income on electricity. Virginia's higher than average electricity burden is unaffordable for over 75% of Virginians. "Energy Poverty," a term for households who have to choose between paying energy bills or buying food at least one time per year, experience "Energy Poverty." Statewide, some 60% of Virginians experience "Energy Poverty" each year.

A number of policies and actions should be adopted that would lead to a cleaner power generation while alleviating the economic burden for those energy costs and creating new opportunities for more communities to benefit in the clean energy economy.

Distributed Energy Generation

To help Virginia achieve its decarbonization goals and reduce emissions, distributed energy generation (DER) programs including multifamily and community solar programs can assist those with the highest energy burdens and costs. Development of distributed generation is also critical for utilities to equitably meet the VCEA's requirements for citing renewable energy facilities in historically economically disadvantaged communities (HEDCs).

A white paper by the Virginia Conservation Network (VCN) noted that in recent years, the General Assembly has taken action to support investments in utility-scale solar facilities. However, Virginia offers none of the financial incentives that are available in states that deploy the most distributed solar. Virginia law also imposes limitations, conditions and penalties on the solar industry and customers. Together these barriers add up to millions of dollars of lost revenue growth for Virginia. The General Assembly can and should embrace the opportunity to address carbon pollution and grow the economy by supporting small-scale solar programs in the Commonwealth that allow consumers to sell the power they generate back to the electric grid. Supporting new incentives, removing barriers, and protecting customers' rights to access renewable energy can create a robust market for local, clean energy. Additionally, increasing the amount of distributed generation in Virginia will contribute to building a more resilient grid and support a larger transition to renewable energy.

- The General Assembly should support distributed solar through incentives such as tax credits, rebates, or low-interest loans; remove barriers that limit customers' access to distributed solar; allow local governments to use electricity from a solar project on one property to serve buildings on nearby properties; and implement specific programs to expand access to distributed energy for low- and moderate-income customers
- Policymakers should reject any changes to the net metering compensation structure, unless those changes, at a minimum:
 - Grandfather all existing net-metering customers
 - Mandate that any changes to net metering do not take effect for at least five years
 - Ensure the economic incentives are as good as or better for customers than the current net metering system

"Breaking Down Barriers to Solar in Our Communities"

<https://vcnva.org/wp-content/uploads/2019/08/BREAKING-DOWN-BARRIERS-TO-SOLAR-IN-OUR-COMMUNITIES.pdf>

Energy Storage

Renewable energies, such as solar and wind, produce intermittent energy which requires an energy storage solution. Cheaper and more efficient storage will make it easier to capture and store renewable clean energy for use when energy generation is unavailable or lower than demand – for instance, so renewable sources generated during the daytime like solar-generated power can be used at night.

Federally, the Biden Administration has launched an effort to push down costs of long-duration energy storage by 90 percent by 2030 as part of its Energy Earthshot Initiative. "We're going to bring hundreds of gigawatts of clean energy onto the grid over the next few years, and we need to be able to use that energy wherever and whenever it's needed," Secretary of Energy Jennifer Granholm said in a statement. "That's why DOE is working aggressively toward cheaper, longer-duration energy storage to reach President [Joe] Biden's goal of 100 percent clean electricity by 2035."

Earlier this year, the Virginia Energy Storage Task Force issued findings and recommendations on energy storage to help Virginia meet its clean energy goals. While the VCEJ continues to review these recommendations, we recognize this is an important part of the solution to accelerate effective clean energy deployment.

- The General Assembly can help to increase state funding for research, development, demonstration, and pilot projects for energy storage technologies and stand up consumer energy storage education programs.

Virginia Energy Storage Task Force

<https://www.scc.virginia.gov/getattachment/7414bf55-7570-4b3a-bd55-cdde9812e976/Va-Energy-Storage-Task-Force-Rept.pdf>

Offshore Wind

Offshore wind will provide economic, employment, and clean energy opportunities for Virginians across the Commonwealth over the next decade. With the passage of the Virginia Clean Economy Act in 2020, Virginia made offshore wind energy a priority by declaring 5,200 megawatts of the energy source in the public interest, making it nearly inevitable that turbines will be built off of the coast of Hampton Roads. The bill also requires Dominion Energy to prioritize local workers as they build out the infrastructure and to submit plans to provide apprenticeship opportunities. However, the bill did not go as far as to mandate a local workforce or support unionized labor. Overall, this project has the potential to power over 600,000 homes and employ thousands of workers in an area that is heavily dependent on the federal government for employment and investments.

There is a lot to be excited about as Virginia's transition to renewable energy kicks into a higher gear off our coast, but we must be vigilant of costs and the workforce that builds this new future. Hampton Roads is an area with large populations of color, especially in Portsmouth (52% Black), where Dominion and Siemens Gamesa are building a wind turbine blade factory. The administration and the General Assembly should give the State Corporation Commission the authority to reign in the costs of this project and also strengthen guidelines for local workforce recruitment from communities of color in the Hampton Roads region to build these turbines [\[HW1\]](#)

[\[HW1\]](#) New section from me.

(2) Energy Efficiency Programs and Jobs: A Key Driver for a Just, Equitable and Clean Energy Transition.

Introduction and Justification:

Innovative state and local actions for a just, equitable, and clean energy transition will be critical to transition to a sustainable economy that addresses racial and economic inequalities and encourages greater public involvement and oversight. Rapidly creating energy efficiency programs and jobs in the energy efficiency sector will be a key driver for a just, equitable and clean energy transition for Virginia.

Almost one-third of Americans face energy insecurity, and the percentage is much higher for people of color and low-income families. At the same time, the very people who cannot afford the benefits of our energy system are paying a disproportionate share of its costs in the form of higher exposure to pollution and pollution-related illnesses such as asthma. Energy efficiency addresses these inequalities at both ends, by making energy bills more affordable for vulnerable people, while also reducing the need for energy production and therefore, reducing the associated pollution.

The American Council on an Energy-Efficient Economy estimates that 35% of the energy cost burden experienced by low-income households could be alleviated if low-income housing were brought up to efficiency levels of the average US home. The benefits of energy efficiency include reduced vulnerability to energy price fluctuations, money saved for other needs, improved comfort, indoor air quality, health and well-being, and reduced greenhouse gases.

A recent study by the Virginia Poverty Law Center called the Affordable Clean Energy Project, found that "on average, Virginia households experience an already higher than average electricity burden of 3.1% compared to the national average of 2.9%. Low-income households spend an average of 8.8% of their income on electricity. Virginia's higher than average electricity burden is expensive and, in many cases, unaffordable for over 75% of Virginians. Energy Poverty, a term for households who have to choose between paying energy bills or buying food at least one time per year suffers from Energy Poverty. Statewide, some 60% of Virginians experience Energy Poverty each year.

Energy efficiency is also an important driver of job creation. With the right policy tools, people from marginalized communities facing the double burdens of energy insecurity and energy-related pollution could gain access to energy efficiency careers.

The resources directed to industries to build a clean energy transition should include a sizable portion directed to the most impacted communities including communities of color, Indigenous communities, and low-income communities. A significant component of these resources must go to create energy efficiency jobs with funds going to cities, counties, tribal communities, and nonprofit organizations to fund major energy efficiency retrofits for the most vulnerable residents, schools, and small businesses. Here are a few reasons why energy efficiency is a key component for a just, equitable and clean energy transition:

1. Energy Efficiency creates lots of good jobs. Energy efficiency jobs numbered 2.18 million in 2016, about twice the total of fossil fuel jobs. This in addition is based on a very expansive definition of fossil fuel jobs, encompassing extraction, power plants, and the supply chain for coal mining and oil and gas drilling equipment manufacture. In addition, energy efficacy jobs are growing much faster. A Department of Energy report showed that employment in manufacturing of energy efficient Energy Star appliances grew 59 percent between 2015 and 2016, while employment in fossil fuel burning power generation grew only 9 percent. Every million dollars invested in building retrofits for energy efficiency creates 11.9 jobs,

compared to only 3.7 jobs in oil and gas according to a University of Massachusetts study (PERI, The Economic Benefits of Investing in Clean Energy).

2. Energy efficiency jobs are well paid. The median hourly wage for electricians is \$26.53, HVAC workers, and roofers are \$22.89 and \$19.22 according to recent Bureau of Labor Statistics. These are key occupations in energy efficiency work. In comparison, the median wage for all occupations is \$18.58.
3. Energy efficiency jobs are shovel ready. For projects to provide an economic stimulus, they need to be operationalized as soon as possible, so the jobs get created and the money starts flowing into the local economy. Retrofitting any one building - even a large public school or apartment building - represents a low capital investment as compared to, say, building a new airport. It is easy to start small right away and scale up as more funding is available.

A focus on energy efficiency for a just transition will create jobs, stimulate the economy, address racial and economic justice, while reducing greenhouse gas emission and other pollutants, and improve community health.

Recommendations:

1. Create an Office of Just, Equitable, and Clean Energy Transition to identify impacted communities and work with local stakeholders to develop energy transition plans. The Office would advise the state legislature and regulators on energy efficiency policies and programs.
2. Develop incentives and programs to stimulate job growth in energy efficiency with and for communities of color, Indigenous communities, and low-income communities. This sector has proven job creation, lots of good jobs, rapid job growth, and creates more jobs for every dollar invested.
3. Development and streamline current economic development plans to coordinate federal aid and workforce training in energy efficiency jobs focused in vulnerable communities.
4. Create state funding sources for energy efficiency upgrades and solar electric systems for low-income households, renters, seniors, and people who are disabled throughout the Commonwealth. Grant funding could include Home Insulation Rebates of \$3,000 per household, Water Heater Rebates up to \$750, and free high-efficiency water heaters, LED lighting, and efficient showerheads and water aerators. Funding sources would be both direct grant monies and On-Bill Recovery Loans programs. On-Bill Recovery Loans provide initial funds to low-income households for installation of energy efficiency upgrades or solar electric systems and then are paid off on monthly users' bills at a rate lower than users the previous bill prior to energy efficiency upgrades or solar installation. An additional "At-Meter" On-Bill Recovery Loan program would apply for renters who will benefit from energy efficiency upgrades.
5. Create a high energy efficiency building code mandate throughout the commonwealth including construction and renovation for public and private buildings. While upfront construction costs may be higher, a study will be needed to explore offsetting costs for low-income households through lower energy operating costs. This mandate could include stringent building envelope standards, upgraded lighting, appliances, and solar-ready design. See Green Construction code of Washington DC and California building code for the highest standards to date.
6. Create a liaison position to assist the DMME and the DEQ with program visibility, public participation, and voluntary compliance.

Sources:

<https://ips-dc.org/report-energy-efficiency-with-justice/>
<https://ips-dc.org/wp-content/uploads/2017/04/RPS-Report.pdf>
<https://inequality.org/research/stimulus-energy-efficiency/>

https://www.epa.gov/sites/production/files/2015-08/documents/affordable_housing.pdf
<https://vplc.org/affordable-clean-energy-project/>
<https://aceee.org/blog/2019/04/efficiency-reduces-energy-burdens-low>
<https://rmi.org/energy-and-affordability-in-housing-finance/>
<https://newbuildings.org/energy-efficiency-and-equity/>
<https://grist.org/article/energy-efficiency-is-leaving-low-income-americans-behind/>
https://peri.umass.edu/fileadmin/pdf/other_publication_types/green_economics/economic_benefits/economic_benefits.PDF
www.bls.gov/oes/2020/may/oessrcst.htm

(3) Sustainable, Clean, and Equitable Transportation for Virginia

Summary

Recommendations for Sustainable, Clean, and Equitable Transportation for Virginia

Summary

This document proposes specific recommendations to solve multiple transportation issues including sustainability, reduced emissions, and equity through *Clean Active Accessible Transportation Modes*, including walking, biking, electric micro mobility (electric bikes, wheel chairs, scooters, etc.), and high quality public transit. These modes are *Clean* by reduced or zero emissions, are *Active* providing physical activity and health benefits, and can be made *Accessible* regardless of income or physical ability. Although electric and more energy efficient cars may reduce greenhouse gasses, they still do not solve a myriad of chronic transportation problems such as increased urban sprawl, traffic congestion, obesity, public health and safety, high infrastructure costs, and transportation inequity. *Clean, Active Accessible Transportation Modes* are implemented effectively through Mobility Management Strategies (also known as Transportation Demand Strategies) that improve transportation options, incentivize reduced driving, and improve land use and zoning patterns. See links listed under recommendations. In summary, we recommend:

- Create a *Virginia Clean Active Accessible Transportation Task Force* and implement programs through diverse community participation that lead to a more equitable, inclusive, healthier and stronger sense of community through transportation options, and infrastructure planning.
- Evaluate transportation through Mobility Management Strategies for both urban and rural communities, for increased access rather than increased mobility to achieve transportation equity and reduced emissions;
- Allocate more attention to creating infrastructure in Virginia that serves non-drivers through a focus on Clean Active Accessible Transportation Modes;
- Implement incentives to decrease the use of the automobile and break the cycle of automobile dependency;

Justification

In the United States, transportation accounts for approximately “29 percent of total U.S. greenhouse gas emissions.”¹ In Virginia, roughly 48% of CO₂ emissions are from transportation alone (Virginia Clean Cities 2019)². In the United States, transportation is the second largest average household expenditure after housing³. Populations most burdened by transportation barriers are low-income, disabled, elderly, rural and minorities, including immigrant

¹ <https://www.epa.gov/transportation-air-pollution-and-climate-change/carbon-pollution-transportation>

² <https://vacleancities.org/taking-on-transportation-emissions/>

³ Bureau of Labor Statistics. (2019). *Consumer Expenditures in 2018: BLS Reports: U.S. Bureau of Labor Statistics*. <https://www.bls.gov/opub/reports/consumer-expenditures/2018/home.htm>

populations⁴. Thus, when transportation is not clean, equitable, healthy or accessible, these communities bear the greatest burden. While some initiatives in Virginia do exist to shift current transportation practices to cleaner sources, such as Richmond's goal to phase in electric buses by 2030,⁵ transportation improvements in Virginia need to keep equity at the center of their initiatives.

Principles for Sustainable, Clean, and Equitable Transportation

Transportation improvements should;

- 1) Provide access to transportation regardless of income-level, race, gender, age, gender-identity, sexual identity, national origin, disability or religion;
- 2) Include an equitable distribution of benefits and burdens;⁶
- 3) Prioritize resources towards historically marginalized communities;
- 4) Not allocate resources for improvements by disproportionately focusing on communities with higher tax-revenue levels;⁷
- 5) Be made with input from all members of a community;
- 6) Not solely be focused on reducing carbon emissions; By focusing on Active Accessible Transportation Modes through Mobility Management Strategies multiple transportation problems can be solved, including equity.

Impact of Auto-Centric Transportation

The last seventy years have been devoted to developed infrastructure based on the notion that the automobile was the best way to get around. This not only encourages driving but in some cases even requires that every trip is performed by the car. Building infrastructure for cars in cities is costly, creating more sprawl and thus incentivizing more driving⁸ (See Appendix C). As the cycle of car dependency increases, transportation options and equity decrease. On average, US communities spend \$25 annually per capita on walking facilities, \$40 per capita on bicycling facilities, \$200 per capita on public transit services, \$1,000 per capita on roads and traffic services, plus more than \$2,000 per capita on government-mandated off-street parking facilities. Automobiles receive 91% of infrastructure investments while transit receives 7%, bicycling 1.2% and walking 0.8%.⁹ In a recent study, driving was found to have a cost to society of 18 US cents per mile due to associated pollution, land use, collisions, and infrastructure and maintenance costs. Cycling by contrast generated a net benefit to society of 32 US cents per mile, primarily due to the health benefits of physical activity.¹⁰ As Clean Active Accessible Transportation increases,

⁴ Hacker, K., Chu, J., Leung, C., Marra, R., Pirie, A., Brahimi, M., English, M., Beckmann, J., Acevedo-Garcia, D., & Marlin, R. P. (2011). The impact of Immigration and Customs Enforcement on immigrant health: Perceptions of immigrants in Everett, Massachusetts, USA. *Social Science & Medicine* (1982), 73(4), 586–594. <https://doi.org/10.1016/j.socscimed.2011.06.007>Jansuwan, S., Christensen, K. M., & Chen, A. (2013). Assessing the Transportation Needs of Low-Mobility Individuals: Case Study of a Small Urban Community in Utah. *Journal of Urban Planning and Development*, 139(2), 104–114.

[https://doi.org/10.1061/\(ASCE\)UP.1943-5444.0000142](https://doi.org/10.1061/(ASCE)UP.1943-5444.0000142)Wallace, R., Hughes-Cromwick, P., Mull, H., & Khasnabis, S. (2005). Access to Health Care and None Emergency Medical Transportation: Two Missing Links. *Transportation Research Record*. <https://doi.org/10.1177/0361198105192400110>

⁵ <http://richmondfreepress.com/news/2019/sep/27/state-backs-dominion-energy-plan-electric-school-b/>
⁶ Virginia Transit Equity, <https://www.vatransitequity.com/>

⁷ Transportation Equity Network, <https://www.cnt.org/sites/default/files/publications/Equity-in-Practice.pdf>

⁸ Emily Badger (March 2014) *America's Cities Are Still Too Afraid to Make Driving Unappealing* Tough policies are the ones that would truly change commuter habits, but we're barely seeing them.

⁹ APTA (2020), Transit Fact Book, American Public Transportation Association (www.apta.com).FHWA (2018), Highway Statistics, Federal Highway Administration (www.fhwa.dot.gov);

at www.fhwa.dot.gov/policyinformation/statistics.cfm.LAB (2018), Benchmarking Report, League of American Bicyclists (<https://bikeleague.org>); at <https://bikeleague.org/benchmarking-report>. Todd Litman (2019), Transportation Cost and Benefit Analysis Guidebook: Techniques, Estimates and Implications, VTPI (www.vtpi.org).

¹⁰ Stefan Gössling, Andy Choi, Kaely Dekker Daniel Metzler (April 2019), Pages 65-74 Volume 158, *Analysis. The Social Cost of Automobility, Cycling and Walking in the European Union*

greater affordable options and equity increases, referred to as *transportation sovereignty*. (See appendix A and B figures. 1,2,3).

Limitations of Electric Vehicles

A massive replacement of oil-fueled individual vehicles to electric ones alone cannot reduce greenhouse gasses consistent with climate stabilization and could result in the scarcity of some key minerals, such as lithium and magnesium. The only strategy that can achieve the objectives globally follows a degrowth paradigm, combining a quick and radical shift to lighter electric vehicles and non-motorized modes with a drastic reduction in total transportation demand.¹¹ Despite the gains of efficiency and reduced emissions from electric vehicles, because of lower fuel costs, owners typically drive 10 to 30% more annual miles than equivalent users of fossil fuel vehicles thus increasing many problems associated with transportation (such as high infrastructure costs, congestion, and sprawl).¹² Clean Active Accessible Modes including walking, biking, transit, and light rail, provide far greater benefits while also reducing pollution and greenhouse gasses. Clean Accessible Alternative Modes can better provide; equitable access to transportation, reduced congestion and urban sprawl, reduced infrastructure and facility costs, consumer savings, investment fairness between drivers and non-drivers, traffic safety, public health and community wellbeing, improved mobility for non-drivers, energy conservation and emissions reductions.¹³

While a part of the transportation network, **the automobile and the electric vehicle must take a back seat to Active Accessible Transportation Modes to truly create a sustainable transportation system.**

Transportation Equity:

Automobile transportation is expensive and often unaffordable to many lower-income households. As a result, planning decisions that favor automobile travel over lower-cost modes tend to be inequitable; they are regressive and fail to serve many lower-income households' needs. In a [study](#) of upward mobility based at Harvard, “commuting time has emerged as the single strongest factor in the odds of escaping poverty.”¹⁴ Motor vehicle travel imposes large external costs. Vehicle travel increases with income and wealthier, higher annual vehicle-mile households tend to impose significant external costs on lower-income households that travel fewer annual vehicle-miles. For example, minimum parking requirements in zoning codes force many low-income, car-free households to subsidize parking facilities used by wealthier motorists. In addition, bus passengers, who require minimal road space, are delayed by congestion caused by automobile commuters, and walkers and bicyclists bear crash risk and pollution costs imposed by motorists.¹⁵ A sustainable transportation hierarchy model can favor affordable and resource-efficient modes over more expensive and resource-intensive modes: (See Appendix C).

A useful way to incorporate equity into planning is to define various equity goals both horizontal and vertical. Horizontal equity assumes that people with similar needs and abilities should be treated equally. Vertical equity considers ways that people can be physically, economically or socially disadvantaged. Specific transportation policies and projects can then be evaluated based on the degree that they support

¹¹ Ignacio de Blas, Margarita Mediavilla, Iñigo Capellán-Pérez, Carmen Ducea,(Volume 32, November 2020,) Energy Strategy Reviews. The limits of transport decarbonization under the current growth paradigm.

¹² Todd Litman (November 2021) Are Vehicle Travel Reduction Targets Justified? Evaluating Mobility Management Policy Objectives Such as Targets to Reduce VMT and Increase Use of Alternative Modes .

¹³ Todd Litman (June 3, 2019), Breaking the Cycle of Automobile Dependency.

¹⁴ <https://www.nytimes.com/2015/05/07/upshot/transportation-emerges-as-crucial-to-escaping-poverty.html>

¹⁵ Todd Litman (2021), Evaluating Transportation Equity “Guidance for Incorporating Distributional Impacts in Transportation Planning”

or contradict these goals, and their design can be adjusted to better achieve these goals. Table 1 summarizes examples of these goals.¹⁶

Table 1; Typical Equity Goals: This table reflects various equity goals that can be used to evaluate specific transport policies and projects. (WRT = With Respect To)

Horizontal	Vertical WRT Income	Vertical WRT Ability and Need
<p>All groups receive comparable shares of public investment and resources.</p> <p>External costs are minimized and compensated.</p> <p>All groups are effectively involved in decision-making.</p>	<p>Affordable modes are favored over expensive modes.</p> <p>Low-income residents can access basic services and activities.</p> <p>Low-income travelers receive price discounts or exemptions.</p>	<p>Universal design (transport system accommodates people with disabilities and other special needs).</p> <p>Basic accessibility (disadvantaged groups can access basic services and activities).</p> <p>Special policies and programs support and protect disadvantaged groups (women, youths, minorities, etc.).</p>

Mobility Management Strategies

To transition Virginia to Clean Active and Equitable Transportation *Mobility Management Strategies* are key and will solve many other transportation problems. Planning must be based on improved accessibility through *Mobility Management Strategies* rather than increased mobility. Conventional planning tends to evaluate transport based on mobility (physical travel), using indicators such as traffic speed, roadway level-of-service, and Vehicle Miles Traveled. However, mobility is seldom an end in itself, the ultimate goal of most transport activity is accessibility,

¹⁶ Todd Litman (2021), Evaluating Transportation Equity “Guidance for Incorporating Distributional Impacts in Transportation Planning”

which refers to people's ability to reach desired services and activities.¹⁷ Mobility-based planning tends to favor faster modes and longer trips over slower modes and shorter trips, and therefore motorists over non-drivers. For example, evaluating transport system performance based on roadway level-of-service tends to justify roadway expansion projects even though wider roads and increased traffic speeds tend to degrade walking and cycling conditions (called the barrier effect), and since most public transit trips include walking links, to reduce transit access. Accessibility-based evaluation can consider such tradeoffs and their equity impacts.¹⁸

To increase Clean, Active, and Accessible Transportation Modes, both incentives and disincentives are required through Mobility Management. Many current emission reduction planning efforts ignore Mobility Management or only mention them incidentally. As a result, currently proposed emission reduction efforts that fail to implement Mobility Management Strategies miss the opportunity to help address other planning objectives such as congestion reduction, urban sprawl, traffic safety, consumer savings and improved mobility for non-drivers.¹⁹

Development planners looked at four cities that won grants each worth \$25 million to increase biking and walking as part of a federal [Nonmotorized Transportation Pilot Program](#) yet very little gains to increase the percentage of biking and walking occurred despite decades of investment. Researchers found that only through incentivized reduced driving, does transit, biking, and pedestrian modes increase significantly.

Programs such as Cash-Out-free-parking, elimination of minimum parking requirements, pay as you drive insurance, congestion pricing, or increased parking fees, creates significant mode shifts.²⁰ (See Appendix D for jurisdictions reducing personal Vehicle Miles Traveled).

Creating land use and zoning policies through Mobility Management Strategies is also key to a clean and equitable transportation system. Designs such as Smart Growth, 15 Minute City Design, Transit Oriented Development, and Car Free Planning strategies means striving for an urban model that allows everyone, in every neighbourhood, to meet most of their daily needs within a short walk or bike ride of their home. It creates a 'human-scale' city composed of vibrant, people-friendly, 'complete' neighbourhoods, connected by quality public transport and cycling infrastructure for the longer trips that residents want or need to make. It means decentralising city life and services and injecting more life into local areas across the city. Equity and inclusivity is at the heart of a successful design. When done in close collaboration with local people and underserved populations, more public spaces in which to mix and socialize and support neighborhood businesses enables people to spend more time with loved ones, and the things they enjoy.²¹

Mobility management is more than individual solutions to individual problems, such as road pricing to reduce congestion and transit improvements to reduce pollution; it is most effective if implemented as an integrated program that includes improved transport options and incentives to use the most efficient option for each trip. It is supported by professional organizations such as the Institute of Transportation Engineers and the Federal Highway Administration.²²

¹⁷ Todd Litman (2003a), "Measuring Transportation: Traffic, Mobility and Accessibility," ITE Journal (www.ite.org), Vol. 73, No. 10, October 2003, pp. 28-32, www.vtpi.org/measure.pdf.

¹⁸ Todd Litman (2003), "Measuring Transportation: Traffic, Mobility and Accessibility," ITE Journal (www.ite.org), Vol. 73, No. 10, October 2003, pp. 28-32; at www.vtpi.org/measure.pdf. Chris McCahill, Matt Pettit and Chris Sinclair (2017), Access Scores – Measuring the Why, Where and How of Accessibility, Citilabs (www.citilabs.com); at <https://bit.ly/2p2ueHY>.

¹⁹ Cynthia Burbank (2008), *Global Climate Change: Transportation's Role in Reducing Greenhouse Gas Emissions*, AASHTO Annual Meeting

Todd Litman (June 2009) VMT Reductions: An Excellent Idea When Correctly Evaluate

²⁰ Emily Badger (March 2014) *America's Cities Are Still Too Afraid to Make Driving Unappealing*

²¹ Implementation Guides (May 2021), 15-minute cities: How to ensure a place for everyone.

Todd Litman, GTZ Transport and Mobility Group, (2003), Module 2b: Mobility Management By (Victoria Transport Policy Institute), Editor: Karl Fjellstrom Manager: Manfred Breithaupt.

²² Sam Staley and Adrian Moore (2008), *Mobility First: A New Vision for Transportation in a Globally Competitive Twenty-First Century*, Rowman & Littlefield.

RECOMMENDATIONS:

The following recommendations are designed to best meet the needs of marginalized communities, reduce carbon emissions (and other forms of pollution such as nitrogen oxides), and solve multiple transportation issues for Virginia.

1. Conduct research within jurisdictions across the state to gain insight and recommendations from local communities on improvements they hope to see in public transit systems and other alternative clean modes, focusing specifically on dialogue with marginalized communities across the state and educating on the benefits of Mobility Management Strategies.
2. Create a Virginia state Clean, Active, and Accessible Transportation Task Force of diverse stakeholders and communities most impacted by transportation inequity to study, design and create Mobility Management Strategies (also called Transportation Demand Management - TDM).
3. Implement Mobility Management Strategies (or Transportation Demand Management - TDM) for both urban and rural communities to improve transportation options, encourage use of more efficient modes, create more accessible land use patterns, and reform biased planning practices to create equity. Review the more than 3 dozen strategies and the **Mobility Management Encyclopedia** for in depth information. See; <https://www.vtpi.org/tdm/> For a pdf download see; https://www.academia.edu/27864139/The_Online_TDM_Encyclopedia_mobility_management_information_gateway See: https://www.vtpi.org/gtz_module.pdf See: https://www.vtpi.org/vmt_red.pdf *Are Vehicle Travel Reduction Targets Justified? Evaluating Mobility Management Policy Objectives*, November 19, 2021, Todd Litman Victoria Transport Policy Institute

Overview of Mobility Management Strategies

Improves Transport Options	Incentives for Efficiency and Reduced Driving	Land Use Management	Policy & Planning Reforms
Transit improvements	Employee Active Transportation benefits	Eliminate Minimum Parking Requirements	Commuter Trip Reduction Programs
Traffic Calming			Access Management
Walking and cycling improvements	Cash-out Free Parking Program	Car-Free Districts	Carfree Planning
Protected bicycle lanes	Increased parking pricing	Dedicated bus lanes for rapid transit	School and Campus Transport Management
Bike/Transit Integration	Pay-as-you-drive vehicle insurance incentives	Pedestrianized Streets	Market Reforms
Rideshare programs		Smart growth	Context Sensitive Design
Flextime/Compressed workweek	Congestion pricing	New urbanism	
Carsharing	Distance-based fees	15-minute Neighborhoods	Freight Transport Management
Telework	Vehicle Tax increase on Vehicles Valued Above \$15K and Second Vehicles	Zoning and Planning	Tourist Transport Management
Guaranteed ride home	Road Pricing	Upzoning and Clustered Land Use near transit stops	Transit Marketing

	Speed Reductions	Location-efficient development	Non Motorized Encouragement Programs
	HOV (High Occupancy Vehicle) Priority	Parking Management and Shared Parking	
	Fuel tax increases	Bike Corral Parking	
		Smart Growth Transit Oriented Development	
		Car free planning	
		Road Diets	
		Traffic calming	

4. Use Mobility Management revenue sources to fund infrastructure for Active Accessible Transportation Modes which in turn will increase transportation equity.
5. Mobility Management Strategies for initial consideration:
 - a. Ensure that low-income communities have access to a form of transportation within two blocks walking distance from their place of residence.
 - b. Allocate funding to the public transit sector in Virginia to remove fares across the state and provide on demand shuttle service for rural communities.
 - c. Create higher vehicle tax on automobiles valued above \$35K and on second vehicle ownership. These funds are then used to increase Active Accessible Transportation Modes in EJ communities.
 - d. Eliminate minimum parking requirements.
 - e. Integrate affordable housing and transit planning near transit stops to increase affordability and accessibility.
 - f. Implement Pay-As-You-Drive insurance.
 - g. Implement Cash-Out-Free Parking programs
 - h. Provide Employee Active Transportation benefits.
 - i. Eliminate single family zoning in areas within walking distance of transit stops to encourage commercial spaces to benefit residents and those near enough to access via transit. Upzoning near transit also means homeowners can add detached housing units on a lot and help situate middle and low-income people near transit easing the housing crisis and putting more people in walkable and transit access communities.

- j. Allocate more attention to creating infrastructure in Virginia that serves non-drivers;
- k. Implement incentives to decrease the use of the automobile and break the cycle of automobile dependency;
- l. Implement land use policies including Smart Growth, Car-Free Planning, and 15 Minute Cities²³ across the state in order to decrease the high need for cars and ensure that all citizens of Virginia have easy access to cultural, social, economic opportunities, and access to basic necessities such as food and medical centers.
- m. Shift current oil-based buses and trains to electric, focusing specifically on making this transition in communities that currently face the highest pollution burdens from public transportation first.
- n. Make state government buildings, schools, DMV, clinics, accessible by transit, bicycle or walking.

²³ <https://www.15minutecity.com/about>

WATER INFRASTRUCTURE & SAFETY

Water infrastructure and water safety is essential for public health, and in its absence the overall social and economic success of a community is impossible. Virginia has in the last decade been able to provide great improvements through state and federal funding and prioritization, but there are still many communities who are still at risk. The disaster that happened in Flint MI, is one that could happen in any town or city who is facing a continuous economic downturn and looks to cut costs at the expense of public health. The failed response from local, state and federal governments aggravated the crisis because they did not treat this issue with the gravity it deserved. Virginia, is on the right track here due to its prioritization of water infrastructure in allocating federal and state funding, these investments should continue moving forward to ensure we don't suffer a similar catastrophe and we continue to strive to create opportunities for success for all communities across the Commonwealth.

Continue to Partner with the Federal Government to Fully Fund Water Infrastructure Improvements

- Continuing to use the allocated \$411.5 million in federal American Rescue Plan (ARP) funding to reduce water pollution and increase access to clean water across the Commonwealth. This funding is essential to ensuring public health and upgrading the aging water systems and improving drinking water, wastewater, and stormwater infrastructure. This funding is part of the greater ARP funding that totaled \$4.3 billion that was available to the Commonwealth. We urge this administration to continue making water infrastructure a priority in how it allocates Federal Funding through similar legislation, and to work with EPA, and other agencies to maximize public and environmental health for Virginians.
- By ensuring this funding, we have a tremendous opportunity to rebuild our aging water systems and ensure every Virginia family has reliable access to safe, clean drinking water. In addition to modernizing water and sewer infrastructure across the Commonwealth, these investments will go a long way towards restoring the health of our waterways and reducing pollution in our communities, especially in low income areas where there is an increase in lead contamination. The proposal includes millions of dollars in wastewater treatment and nutrient removal, sewer overflow projects in Richmond, Alexandria, and Lynchburg, and enhancing water systems in small and disadvantaged communities.
- These proposed investments supplement more than \$300 million in ARP funding that the Commonwealth sent to towns in June and \$2.3 billion made available to Virginia's 133 counties and cities directly from the federal government to meet local response and recovery needs, which include improving access to clean drinking water and to supporting vital wastewater and stormwater infrastructure.

Eliminating Lead from Drinking Water

- Lead can be inhaled, or ingested. Small amounts of lead can poison a child or an adult. In small children, the mechanism of exposure is hand to mouth. Lead dust adheres to the hand and the normal hand to mouth activity results in ingestion of small particles of lead leading to elevated blood lead levels. Lead pipes in the water distribution system and lead in fixtures inside buildings is an additional source of exposure.
- Children are exposed to lead through hand to mouth contact when they touch. Lead disrupts the normal neurological developmental process in children, resulting in loss of IQ, learning and attention deficits, changes in information processing and on a population basis, lowered rates of graduation from school and higher rates of incarceration. (Chen, 2011, Health Impact Project, 2017).
- The before mentioned investments are critical in ensuring that lead related illnesses and harm are eliminated. In Virginia there are cities and counties where the number of children with elevated blood lead levels are significantly higher. Examples include counties of Accomack, Chesterfield, Chesapeake, Fairfax, Henrico, Loudoun and Prince William and the cities of Alexandria, Charlottesville, Chesapeake, Newport News, Norfolk, Richmond and Roanoke.

Maximizing EPA WIFIA Loans

- The WIFIA program accelerates investment in our nation's water infrastructure by providing long-term, low-cost supplemental loans for regionally and nationally significant projects. The Administration should encourage localities, and have state agencies support in accessing these federal loans so that needed infrastructure improvements are made. Below are examples of localities that have received these loans, and how they have helped galvanized water infrastructure improvements.
- On February 19th, 2021, U.S. Environmental Protection Agency (EPA) announced a new \$321 million Water Infrastructure Finance and Innovation Act (WIFIA) loan to Alexandria Renew Enterprises for its RiverRenew Tunnel System project. This project will benefit public health and the environment by significantly reducing discharges of untreated wastewater to Hooffs Run, Hunting Creek, and the Potomac River.
- On September 21, 2021 EPA announced a \$477 million Water Infrastructure Finance and Innovation Act (WIFIA) loan to the Hampton Roads Sanitation District (HRSD). This loan is the second installment of a total of \$1 billion in WIFIA assistance for HRSD. The WIFIA funding will help retire an 80-year-old wastewater treatment plant in an economically challenged community and replenish groundwater supplies that are threatened by sea level rise.

Continue to Prioritize Low Income Communities in Distributing Drinking Water State Revolving (DWSR) Funds

- Virginia should maximize its use of this and all Federal opportunities to maximize water infrastructure improvements and ensure the public safety of Virginians. These investments are critical to ensure that water systems are maintained to not put Virginians at risk.
- The Virginia ODW supervises and controls all water supplies and waterworks in the Commonwealth insofar as the bacteriological, chemical, radiological, and physical quality of waters furnished for human consumption may affect the public health and welfare. ODW receives annual funding from EPA (\$18.1 million in 2020) through the Drinking Water State Revolving Fund (DWSRF). ODW uses the EPA funding to provide subsidized, low interest loans to waterworks owners, helping them build, maintain, and expand their systems.

The DWSRF Program recognizes the additional challenges small, economically disadvantaged, low-income communities face, so it provides low-interest, extended loan terms (up to 30 years) and grant funding (up to 100%) to help ease the financial strain of infrastructure investment. Waterworks that propose to use DWSRF loans/grants to address public health issues and those that serve disadvantaged communities, meaning water rates are greater than 1% of the median household income, receive prioritization for funding.

Public and Community Health and Participation

Planning and Public Participation

Capacity Building for Historically Disadvantaged Communities

Tribal Nations and Native Communities

Planning and Public Participation

Meaningful Involvement & Public Engagement and Public Participation

The Council consistently hears from the public about barriers to participation in the current system for environmental decision making by state agencies. First, it is important to note, public participation related to environmental decisions by state agencies applies to both rulemaking and permit decisions.

RECOMMENDATIONS:

The following recommendations are intended to guide the development of public participation standards that promote meaningful involvement in environmental decision making:

1. In regard to the Administrative Process Act, the Council recommends that § 2.2-4012 be amended to include “meaningful involvement” as a purpose of the regulatory process.
2. Introduce a budget amendment to fund technology and personnel enhancements to ensure there can be a hybrid option at community information meetings and public hearings
3. Conduct community information meetings and public hearings in the closest practical location to the site of the proposed project, or the affected community.
4. Prioritize publicly owned spaces for hearings and events.
5. Develop guidance on using a respectful approach to security during public hearings. It is essential such guidance be developed in collaboration with communities of color, with acknowledgment of the historical and ongoing trauma of disproportionate police violence against communities of color that underlies the need for it.
6. Proactively notify and engage with affected communities on environmental decisions, early in the process
 - a. State agencies or responsible parties should screen for EJ communities before planning any public hearing. While convenient for preliminary screening, demographic and environmental databases have limitations and require “on-the-ground” confirmation of screening results.
 - b. State agencies or responsible parties should conduct enhanced or targeted outreach to notify local residents of public hearings or rulemakings when the issue under consideration takes places in or potentially impacts a specific EJ community. The specific steps taken in such an outreach effort should be informed by knowledge of the local community. Perhaps it will be possible to leverage new Department of Environmental Justice EJ staff for knowledge about and outreach to the local community. Local community leaders and advocacy organizations can help confirm screening results and can help target outreach to the potentially affected EJ community.
 - c. Require state agencies to post public notices for public hearings in print and virtual/social media platforms (currently optional). Print media should include media publications targeted to EJ communities that may have been identified in the screening stage. Online communications don’t have to mean targeted ads (\$\$\$), these notices could simply be posted on agency social media, once efforts have been made to expand readership and engagement within diverse communities.
 - d. Website materials about public participation should be developed at an 8th grade reading level and include visual aids and process flow charts to aid in understanding the public participation process.

- e. Agencies should plan so that an average citizen with no prior knowledge of the agency or how it is organized can navigate to the home page and immediately recognize where they need to “click” next in order to sign up for or submit public comments. This could be done by increasing the visibility of active public notice periods, public participation process information, and the Virginia Regulatory Town Hall website link as well as agency website.

RECOMMENDATIONS:

The following recommendations are intended to increase the capacity of the public, especially those persons or communities considered historically disadvantaged, to advocate for a clean, healthy and safe environment:

1. Disadvantaged and overburdened communities need support and education to build capacity and equity so all citizens of the Commonwealth are empowered to advocate for themselves on environmental decisions.
2. All citizens need a strong foundational education in topics relevant to the environment, their health, and how different levels of government make decisions that affect both. A review of the state’s standards of learning (SoLs) and the Virginia Community College System (VCCS) General Education Certificate and Arts & Sciences curriculum is recommended. This review should determine if, when, and to what degree students are afforded an opportunity to learn about the environmental decision-making process and opportunities for public participation.
3. State agencies should look for opportunities to partner with EJ communities to seek support from federal agencies to attain grants and technical assistance. In South Carolina, in 2009, the state environmental agency was granted US Environmental Protection Agency (EPA) funding to work with environmental justice communities identified in each of four regions with-in the state to conduct projects uniquely tailored to needs identified by that community. As the DEQ’s new EJ Office hires and establishes regional staff, a similar approach could be taken to establish regional pilot projects for the promotion of environmental justice. Regional projects for environmental justice could and should address urgent environmental needs, however, such work could also provide relationship building opportunities for state agencies and environmental justice communities. By working with local community members and hiring local contractors, addressing environmental inequity can also bring environmental leadership capacity and economic development to the communities where it is needed most.
4. Expect, plan for, and have patience for the time that consensus building requires. Fully empowering a community to identify their own priorities through education and robust public engagement, building leadership from within the affected community, and providing appropriate oversight of funds are crucial elements for the success of any plans to provide support to communities in need.

(4) Tribal Nations and Native American Populations

Sovereign indigenous tribal nations (“Tribes”) have existed in what is now called the Commonwealth of Virginia (“the Commonwealth”) since long before the first European colonists arrived on the shores of the North American continent. These nations, their governments and their people, each with their own unique history and traditions, have survived more than 500 years of attempts by, first European and later American, governments to uproot and destroy them. Yet Tribes are still here; they are still honoring the treaty agreements that established government-to-government relationships with the Commonwealth before its independence from England. Tribes have kept the peace, remained on their designated lands, provided tribute to the Governor of the Commonwealth on a yearly basis, and provided military support to the Commonwealth and the United States for centuries. In fact, many Tribes in Virginia have sent soldiers to war for the Commonwealth in every major American conflict since the

American Revolution and even before, in colonial conflicts. It is unfortunate that the Commonwealth has not fully upheld its promises enshrined in the Treaty of Middle Plantation: to provide permanent ownership of designated lands to Tribes, to provide access to natural resources upon which tribal identity and culture is based, and provide due process protections and civil rights for tribal citizens.²⁴

Land is a critical resource that communities need to thrive; this idea is foundational to the notion of environmental justice. If the Commonwealth's recent commitments to seeking justice for historically disadvantaged communities, including sovereign tribal nations nested within its borders, are to be fully realized then enough land must be restored to the control of each Tribe so that each might reasonably provide a place for its own citizens to live together in community and carry on their unique traditions into the future. In most cases, restoration of land to Tribes would be an exercise in returning only a small portion of that which was already promised and which rightfully, by treaty, already belongs to them.

The Commonwealth has not kept its promise that “the said Indian Kings and Queens and their Subjects, shall hold their Lands, and have the same Confirmed to them and their Posterity”.²⁵ Tribal lands have been drastically reduced such that in modern times the majority of Tribes have no designated lands remaining.²⁶ Designated tribal lands in the Commonwealth currently total about 1,700 acres, held in two parts, called reservations, by the Pamunkey and Mattaponi Tribes. This remaining acreage is a small shred of the original land holding promised to these two Tribes by treaty, to say nothing of the acreage owed to several other Tribes who currently have no land at all. Even the two remaining reservations, tucked along the borders of King William County on the banks of the Pamunkey and Mattaponi rivers, are imminently threatened by shoreline erosion and sea level rise associated with climate change. Other tribal citizens and communities who own land as private citizens or organizations are likely also at risk, and for Tribes without designated lands, these private lands are critical to their survival.

The future of tribal communities in the Commonwealth has long been under threat due to “anti-Indian” policies and the associated tribal land loss; what little tribal land remains will be eroded or underwater within decades due to climate change and sea level rise. There can be no consideration of environmental justice if a community has been purposefully deprived of land, an environment, in which to exist in the first place. Justice means the Commonwealth should support the acquisition of land to be held in trust for each Tribe; but to specify the first use of this land must be for housing and community services to tribal citizens and providing access to natural or cultural resources for those citizens, not solely for large commercial enterprises that would exclude the establishment of a residential community rather than encourage it.

Furthermore, the Commonwealth has not kept its promise to allow Tribal citizens access to “their wonted conveniences of Oystering, Fishing, and gathering Tuckahoe, Curtenemons, Wild Oats, Rushes, Puckoone, or anything else (for their natural support)” (Articles of Peace). This part of the treaty outlines the responsibility of the Commonwealth to protect natural resources for use by tribal communities. The amount of damage to water, ecosystems, plant and animal species, even to the mountains themselves, that European and American societies have visited upon the lands of the Commonwealth since their arrival here cannot be overstated. One of the primary resources English colonists to Virginia targeted first was timber, and it didn't take but a century for almost all of the old growth forest in Virginia to be completely destroyed. Marches and floodplains were destroyed by urban development, dams blocked the flow of rivers. Keystone terrestrial species like red wolves and Eastern Elk and Bison were driven to extinction. Likewise, the fish stocks that the infamous colonist Captain John Smith bragged about in his memoirs were destroyed by the end of the 19th century when the herring and sturgeon fisheries of the

²⁴ The Treaty of Middle Plantation, signed on May 29, 1677, was published that same year in London as the *Articles of Peace*. <https://encyclopediavirginia.org/entries/articles-of-peace-1677/>

²⁵ Quote from *Articles of Peace*

²⁶ “Designated tribal lands” refers to land held in trust for Tribes by the state or federal governments, commonly called “reservations”.

Chesapeake Bay finally crashed, and have never recovered, despite conservation efforts. No doubt the intentional introduction of the now invasive Blue Catfish (*Ictalurus furcatus*) by the Department of Wildlife Resources into the Chesapeake Bay Watershed, done to promote sport fishing in the region and water quality impairments associated with industrial agriculture, are not helping the native fish stocks recover. The reckless disregard for other living things and the environment hurts not only indigenous people, but all people, because humans are not separate from nature. Here again, we must acknowledge that there can be no environmental justice when basically all of the biotic features of the environment on which indigenous people are dependent for survival and good health, are in a constant state of being further degraded, contaminated, and driven to extinction. Therefore, another foundational requirement to promoting environmental justice for indigenous people and Tribes is a strong commitment to biological conservation and the preservation of wild lands and critical habitats.

The final promise of the Treaty of Middle Plantation is providing access to due process and civil rights to tribal citizens. In the 17th century, when the treaty was signed, this promise amounted to an offer of protection against acts of violence by colonists, prompted by Bacon's Rebellion. Much has changed since that time, not the least of which is the drafting and signing of the U.S Constitution and Bill of Rights, which apply to tribal citizens, because according to the Indian Citizenship Act, signed in 1924, Native Americans have American citizenship too.²⁷

Federal and state policy towards Tribes, tribal citizens, and governing tribal lands is complicated, and has changed over time. Since the early to mid 20th century, federally recognized Tribes have held a status known as "nested sovereignty" which means the federal government acknowledges and at least claims to encourage tribal sovereignty, but it exists within certain boundaries established by treaty, practice, or legal precedent. Typically, Tribes have their own constitution, laws, or traditional government structure and generally have control over anything the aforementioned does not deny them. Tribal governments control tribal enrollment (who is a citizen), economic development (business policy and decisions), and - if the Tribe has designated tribal lands - then the tribal government also has control over land use, property rights, and has civil and criminal jurisdiction over tribal members who commit crimes within the boundaries of their designated lands.

Here again, we come to the reason why access to designated tribal lands for each recognized Tribe is essential to achieving justice – because having control over land and citizens, however limited by the "nested" concept, is absolutely central to realized tribal sovereignty. A Tribe without land is inherently limited in how many of those factors it can control, as land held in private ownership is not under tribal legal jurisdiction. That said, given the confines of the current US tribal system, we must also acknowledge the immense power tribal governments have over their citizens and the responsibility that comes along with that power in a free and democratic society. When issues of discrimination and unfair practices are concerned, tribal citizens should be afforded some level of oversight or intervention from state or federal powers. In modern times, there is a need to balance hard-won tribal sovereignty with affording due process and civil rights protections to tribal citizens.

RECOMMENDATIONS:

The following recommendations are intended to promote environmental and social justice for Tribal Nations and Native American people living in the Commonwealth:

1. Support Executive Order 82 "Consultation With Federally Recognized Tribal Nations For Environmental And Historic Permits And Reviews".
2. Identify pathways for meaningful engagement with tribal citizens and members of Native American populations that are not part of a recognized Virginia Tribe. Tribal governments are akin to state or local governments, so logically, community engagement can not stop at the Chief or Council, but must include tribal

²⁷ <https://www.loc.gov/item/today-in-history/june-02/>

citizens as well. State agencies can help promote such engagement by working with tribal leaders and other members of tribal communities to establish practices that respect tribal sovereignty but also allow for tribal members and residents of state reservations to be notified and engage directly with state agencies, just like any other citizen of the Commonwealth.

3. Develop a state guide to tribal areas of interest when it comes to environmental and/or cultural concerns. Tribal consultation and notification requirements should be based on jurisdictional geographic areas (e.g., counties, cities, incorporated areas) or other delineated areas of interest, self-identified by each Tribe recognized by the Commonwealth. The 5-mile radius suggested in recent legislation is too small an area to adequately capture Tribal interests for public participation purposes, which often range far from the location of the modern community or designated tribal lands, to historical homelands and places of migration or cultural importance.
4. Establish a Native American Advisory Board modeled after existing boards that solicit feedback from various populations of color in the Commonwealth.
5. Allow tribal grant access (VLCF)

Emerging Issues

Overview

In addition to holding public meetings where council members hear directly from Virginia residents who are seeking information or to make recommendations and requests regarding environmental issues they experience. Virginians living in regions distant from Richmond deserve to have the same opportunities to address the council as those living in or near Richmond. A visit to the far southwest portion of the state has been on the agenda for the past two years. In 2021 several members of the Virginia Council on Environmental Justice made a site visit to the far southwest region of the state to Wise County and the city of Bristol. The council heard from a number of residents and coalitions. The following section are proposals and summaries from those who testified.

Site Visit Agenda:

<https://docs.google.com/document/d/1fTO5tu9eDP23m7EfqwK96CpkNiOEMmaxg2zVUnSlhLw/edit?usp=sharing>

Office of Just Transition

Proposal

Mission: The Office of Just Energy Transition will increase the capacity of the Commonwealth to steward an equitable and just transition in communities negatively impacted by the downturn in the coal economy. The Office will:

1. Develop a community of practice that facilitates **preparation**, during which the groundwork is laid for a successful transition by planning and beginning to implement strategies to assist communities and workers.
2. Provide assistance during **closure**, during which Virginia's remaining power plants and coal mines close down. This will be the period of maximum negative impact to workers and local economies.
3. Steward a **recovery**, during which workers and communities complete their transitions to a future after fossil fuels and other carbon-emitting economies. For Southwest Virginia, recovery must begin

immediately to address decades of coal industry decline; for other communities, recovery can begin now as communities get a head-start on diversifying their economies and workers start planning early to take charge of their own futures.

The Need: The Virginia Clean Economy Act mandates that the Commonwealth transition away from carbon-emitting electric generation, putting further downward pressure on fossil-fuel industries already facing decline as the electricity sector decarbonizes. As Virginia and the country rely less on fossil fuels, workers and communities historically reliant on fossil fuel production and infrastructure will lose jobs and tax revenue, further exacerbating the economic hardships faced in these areas. Coalfield communities have been experiencing the harsh reality of the declining coal industry for decades, and now more workers and communities across the entire Commonwealth will begin to experience this challenging economic transition. As we change the way we produce energy, Virginia has a responsibility to ensure that vulnerable communities are not left behind during the transition.

Action: The purpose of the Office is to (1) aid workers in the transition to new, high-quality, jobs, and (2) help communities continue to thrive by expanding and attracting diverse businesses, replacing lost revenues, and repairing the environmental damage of extractive industries. The Office of Just Energy Transition will collaborate with the Just Energy Transition Advisory Board and create a Just Energy Transition Action Plan. The Office will commission a study regarding the effects of power plant and mine closures to inform the Action Plan in order to better assist workers and communities that will be adversely affected by the loss of jobs and revenues due to the closure of coal-fired power plants. The Advisory Board should include representatives of coal communities, labor unions, regional nonprofits, issue experts, and members appointed by the Governor. The Advisory Board should lead the drafting of the Action Plan, which must be developed in consultation with stakeholders in impacted communities, within two years after the establishment of the Office, and must be updated every three years. The Action Plan will address the Office's plans for each bullet listed below.

The Office of Just Transition is responsible for:

Administrative

- Administering the Just Energy Transition program and the development and implementation of the Just Energy Transition Action Plan for Virginia.
- In coordination with the Department of Energy, monitoring the timing and location of facility closures and job layoffs in fossil-fuel-related industries and making recommendations for how to most effectively respond to these economic dislocations.
- Engaging in administrative proceedings that are relevant to the purposes of the Office, including matters before the State Corporation Commission and Department of Environmental Quality.
- Developing realistic options for further state support of just transition strategies. Recommending to the General Assembly and Governor legislative changes that would allow the Office to better achieve its purpose.
- Administering a mitigation fund to provide assistance for communities facing closures, including assistance with lost tax revenues and wages, in coordination with the Department of Social Services, the Employment Commission, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the Department for Aging and Rehabilitative Services, the Economic Development Partnership, the Community College System, and the Department of Education.

Local Engagement

- Working with stakeholders in each impacted community to develop local plans and to inform the statewide Action Plan.
- Supporting the Just Transition Advisory Board.
- Targeting early successes in business start-ups, expansions, retention, and attraction. ●

Empowering communities with resources to drive their own economic transitions.

Increasing Funding & Improving Programs

- Identifying funding sources and aligning regional, state, and federal programs, grants, and investments to assist local infrastructure projects and revitalization strategies.
- Identifying and funding environmental remediation efforts necessary to improving community health and attracting economic development.
- Working with state lawmakers, utilities, and mining companies to increase transition funding.
- Ensuring impacted communities have adequate health and social services to support a just economic transition, including access to education, transportation, health care, child care, mental health care, and addiction recovery care.

Clinch Coalition Recommendations

Recommendations by The Clinch Coalition to the Virginia Council on Environmental Justice, October 25, 2021:

Recommendations for Stronger Logging Regulations

- An application and permit process could be put into place.
- A NEPA-type process could be put in place to ensure state and federal listed endangered species be protected.
- Best Management Practices (BMPs) should be requirements, not recommendations.
- Loggers should have to follow more environmental laws other than the Clean Water Act.
- Logging impact on neighbors and communities need to be assessed.
- The Commonwealth should look into Forest Banking for forest management.

Recommendations for Transparency of the Southwest Regional Recreational Authority (SRRA) and Enforcement of Environmental Regulations

- Core Issue: Many state authorities' operations in SWVA are shielded from public view and exclude citizens from decision-making processes
- SRRA does not routinely seek public comment for proposed projects, make trail development plans available for public review, or even publicly disclose the identity of its board
 - Clear guidelines are needed from the General Assembly establishing mechanisms for public input and requiring transparency in state authority operations
- Regulatory agencies are hesitant to enforce Virginia's environmental laws on state-funded projects, even when violations are discovered, since doing so would amount to the state engaging in enforcement action against itself.
 - The Commonwealth should clarify that environmental regulations apply to all public entities and ensure that enforcement for violations is consistently applied

Recommendations for Addressing Public Health

- Provide funding for research to advance the knowledge base related to the effects of the environment on the health of citizens of Southwest Virginia.
- Provide adequate funding and resources to regulatory agencies to address current and long-standing deficiencies in enforcement of environmental policies and laws.
- Bring environmental justice to Southwest Virginia!

Landfills

Bristol Virginia Landfill

A coalition of faith leaders and residents from twin cities Bristol, Virginia and Bristol, Tennessee areas gave testimony about the noxious gases and fumes coming from the Bristol City Landfill. The following links are letters and requests from the group requesting DEQ immediately revoke the operating permit. Members of the council visited the quarry landfill and the residential areas surrounding it. We heard testimony from family members who have had to flee their homes to escape breathing gases, asthma attacks, and to find rest overnight. The following quote is a portion of a follow-up letter written to DEQ, David Palor on November 5, 2021:

“We are asking that VADEQ, in coordination with Virginia Department of Emergency Management (VDEM), and the city of Bristol declare an emergency and help the distressed residents of Bristol. We would hope that the Tennessee Department of Environment and Conservation (TDEC), the Tennessee Emergency Management Agency (TEMA), the City of Bristol, TN, and any and all associated federal agencies that could help coordinate with this effort and bring relief to citizens.

There are three concrete steps we would like to see as part of this emergency response. The first is that we would like air purifiers and other technologies with washable activated carbon filters (capable of handling the VOCs emanating from the landfill) be purchased for residents inundated with these gases on a near nightly basis. The second is that we would like vouchers for residents who have to flee their homes due to the gases, covering their stay in a reasonably priced accommodation outside the cloud of toxic gases. Thirdly, we ask that the appropriate monitoring equipment be given to local first responders so that they can adequately assess any emergency calls resulting from this disaster.

We have made these requests of the Bristol, VA City Council on several occasions, but have been denied. In a meeting this past Wednesday open only to business leaders and closed to the general public, the City Manager and Attorney, Randy Eads, was asked about this specific issue. His response was, “the city is not prepared to give financial assistance to those that have been impacted at this time.” (See <https://youtu.be/1KOEXR-A-Us>, time stamp 51:41) We cannot overstate how much more intense the gases have become, and individuals’ reactions to them. In the past two weeks, many of our neighborhoods have had the worst nights on record in terms of gas intensity. Last night was probably the worst in the Fairmount district, and this morning, the smell lingers at a pretty heightened levels many miles away from the landfill. The following is a “taste” of what people experienced. Resident Shawnta Helton recorded at 7am this morning, “I’ve been woken up 3 times since about 1:00 am. I have a headache, I’m nauseous, my chest hurts its really tight I feel like I’m carrying a couple hundred lbs. on my chest. I’ve also had nightmares all night and my arms and hands are tingling.” Resident Lori June reiterated this sentiment: “I never call in sick and I just had to. My head is throbbing, my throat is burning, my eyes won’t stop watering and the nausea won’t go away. My head is so foggy I don’t trust myself to even drive to work. I don’t care how cold it is as soon as the stench lifts today (if it does), I have to open the windows.”

The links following are letters and analysis report of air quality and volatile components for April 2021.

<https://docs.google.com/document/d/1fTO5tu9eDP23m7Efqwk96CpkNiOEMmaxg2zVUnSlhLw/edit?usp=sharing>

<https://drive.google.com/file/d/17YTknNAVBLasnsp8Cjg2RZBYbrqkXYvE/view?usp=sharing>

<https://drive.google.com/file/d/1Or7urFla0owVUzuvJSHja2zAg-kIvqNU/view?usp=sharing>

In addition to the residences inundated with these gases the landfill is within ¼ mile of a juvenile detention facility. The youth detained therein have no escape from the gases and fumes.

Recommendation:

1. The request by Bristol residents for DEQ to immediately revoke the operating permit should be approved.
2. The request for air filters or some appropriate mitigation measures be distributed to residents of both the detention facility and those who are being impacted daily.
3. Launch an investigation for how a landfill was permitted and how it failed

Big Stone Gap (electric line requiring destruction of cultural landscape; unneeded redundant electric line risks the local economy of a struggling coalfield town pursuing tourism to replace lost revenues of the coal industry. The utility company should work with the town to identify alternate options.)

Interagency Environmental Justice Working Group

Introduction

Background and Goal

Addressing environmental injustice has been a focus of Governor Ralph Northam's administration. Establishing a Virginia state advisory council on environmental justice (EJ) was part of his campaign platform in 2017. Because this issue is essential, Governor Northam continued Governor McAuliffe's Environmental Justice Council through his first term. Governor Northam issued EO-29 establishing the Virginia Council on Environmental Justice (VCEJ) on January 22, 2019. After passing through the General Assembly, he signed the Virginia Council on Environmental Justice (VCEJ) into law in March 2020.

The 2020 Environmental Justice Act defined environmental justice in the VA Code as the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy.

The Environmental Justice Interagency Working Group was established in a 2020 budget amendment to advance environmental justice within the executive branch and its state agencies. To build on the report released by the body in March 2021 (available at https://www.governor.virginia.gov/media/governorvirginiagov/secretary-of-natural-resources/pdf/2020-Environmental-Justice-Interagency-Report_Final.pdf),

Governor Northam has directed the working group members to continue meeting. The group now has the goals of:

1. Maximizing state resources, research, and technical assistance to further environmental justice (EJ);
2. Coordinating with any other governmental body that is working on similar issues; • Soliciting and reviewing public comments; and
3. Assessing processes and resources required to advance agency-specific EJ policies and update such assessments annually with regards to ensuring EJ is meaningfully considered through agency regulations, to identify EJ and frontline communities, to identify how agency actions are affecting

those communities, to consider economic development and infrastructure needs of those communities and to further public participation of those communities.

Recommendations to ensure that environmental justice concerns are understood and that a framework is in place to address these concerns are extremely valuable. While some state agencies incorporate environmental justice into their review process, there is currently no consistency in how these issues are evaluated, much less resolved. The purpose of this document is to provide recommendations from the VCEJ to the Environmental Justice Interagency Working Group. The VCEJ offers proposals for consistent approaches to evaluate environmental justice as well as in a few cases agency-specific guidance.

VCEJ has heard from many frustrated members of EJ communities who have taken the time to submit comments on EJ issues to the governor's office and agencies just to find only the status quo coupled with another comment period asking for public input on a similar topic. It is the hope of the VCEJ that the Environmental Justice Interagency Working Group will acknowledge this frustration and will not only listen but also urgently incorporate recommendations from those who live in EJ communities throughout the state and the VCEJ.

Existing Authorities under Federal and State Law

In order to give weight to the urgency and underlying necessity for action on EJ by state agencies, some existing authorities are reviewed. These authorities make the case that comprehensive action, as well as a framework for action on EJ in the Commonwealth of Virginia, is long past due.

In October of 2020, the Virginia Department of Environmental Quality (DEQ) released a report, "Environmental Justice Study for the Virginia Department of Environmental Quality" written by Skeo Solutions, Inc. and Metropolitan Group (hereafter, "Skeo Report") available at <https://www.deq.virginia.gov/home/showpublisheddocument/8624/637557216750470000>. Chapter 4 of the Skeo Report discusses DEQ's existing legal authority to address Environmental Justice in DEQ Programs. Rather than repeat what is contained in that report, below is a discussion of Title VI of the Civil Rights Act of 1964, since that law applies to **all state agencies** that receive federal funds or are "recipients".

Generally, Title VI requires recipients of federal funds to operate **all of their respective programs and activities**, including those not funded with federal funds, in a manner that does not discriminate against individuals or groups of individuals on the basis of race, color or national origin. Discrimination includes actions that are taken with the intent to discriminate, or that have the effect of discriminating against individuals on the basis of race, color or national origin. When a recipient takes any action with the intent to discriminate, an individual or group of individuals can file suit in federal court. When a recipient takes any action having the effect of discriminating (also referred to as having a discriminatory impact), an individual or group of individuals can file an administrative complaint with the federal agency or agencies that provide the federal funds to the recipient. When a recipient receives funds from multiple federal agencies, a complaint can be filed with each federal agency and/or with the U.S. Department of Justice.

Since Title VI applies to all of a recipient's programs and activities, state agencies should examine whether any aspects of their programs or activities are discriminatory. This includes activities such as issuing permits, developing policies or guidance, providing translation to non English speaking persons so they can access the recipient's services and participate in the recipient's activities (such as providing testimony or comment at public hearings or during public comment periods), the recipient's hiring and promotion practices, and the recipient's selection of individuals to participate in any advisory body to the recipient.

In the closing days of the Obama Administration, the Environmental Protection Agency (EPA) issued its

External Civil Rights Compliance Office Compliance Toolkit, available at https://www.epa.gov/sites/default/files/2020-02/documents/toolkit_ecrco_chapter_1-letter_faqs_2017.01.18.pdf. Of the many significant changes made to EPA's Title VI program was the explicit abandonment of what was known as the "rebuttable presumption" that applied to permitting activities when the activity sought to be permitted complied with applicable environmental standards. The "rebuttable presumption" was that the activity was presumed to comply with Title VI, because absent any environmental standard compliance issue, the activity, presumptively did not cause any disparate impact on the basis of race, color or national origin. In abandoning the "rebuttable presumption" EPA made the following two observations:

1. The fact that the area is designated as in attainment with the NAAQS [National Ambient Air Quality Standards] and that the recent permitting record shows that emissions from the facility would not cause a violation of the NAAQS would be insufficient by themselves to find that no adverse impacts are occurring for purposes of Title VI and other federal civil rights laws. EPA's investigation would seek to ascertain the existence of such adverse impacts (e.g., violations of the NAAQS) in an area regardless of the area's designation and the prior permitting record. As stated previously, compliance with environmental laws does not necessarily constitute compliance with federal civil rights laws.
2. Complainants do not bear the burden of proving adversity. EPA recognizes that it is responsible for conducting an investigation of the allegations to determine if there is adverse impact.

U.S. Environmental Protection Agency, External Civil Rights Compliance Office Compliance Toolkit, at 12-13 (Jan. 18, 2017) (footnotes omitted).

EPA's abandonment of the "rebuttable presumption" was endorsed by the Fourth Circuit Court of Appeals in the *Friends of Buckingham* case, which invalidated an air permit issued by the Air Pollution Control Board for the Atlantic Coast Pipeline. Although not a Title VI case, the Fourth Circuit, nonetheless, invalidated the permit because the Board failed to individually consider the potential degree of injury to the local population independent of NAAQS and state emission standards. The Court ruled:

The Board's reliance on air quality standards led it to dismiss EJ concerns. Even if all pollutants within the county remain below state and national air quality standards, the Board failed to grapple with the likelihood that those living closest to the Compressor Station -- an overwhelmingly minority population according to the Friends of Buckingham Survey -- will be affected more than those living in other parts of the same county. The Board rejected the idea of disproportionate impact on the basis that air quality standards were met. But environmental justice is not merely a box to be checked, and the Board's failure to consider the disproportionate impact on those closest to the Compressor Station resulted in a flawed analysis.

Friends of Buckingham v. State Air Pollution Control Bd., 947 F.3d 68, 91–92 (4th Cir. 2020)

In addition to existing authority at the federal level, some state-level authority includes the 2020 Environmental Justice Act which declares that it is the "policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities" VA. Code § 2.2-235 and the Commonwealth Energy Policy that at least in the context of the energy sector "[e]nsure[s] that development of new, or expansion of existing, energy resources or facilities does not have a disproportionate adverse impact on economically disadvantaged or minority communities." Va. Code Ann. § 67-102(A)(11)

Overarching Framework

The following recommendations are those that can be integrated into an overarching framework of addressing EJ in the Commonwealth and thus should be incorporated into multiple agencies as well as guiding agencies' relationships with one another and throughout the executive branch.

Recommendations

1. We recommend that the Virginia Interagency Working Group adopt the approach used in New Jersey's guidelines *Furthering the Promise: A Guidance Document for Advancing Environmental Justice Across State Government*, which was released in September 2020 available at: <https://nj.gov/dep/ej/docs/furthering-the-promise.pdf>. What stands out about the New Jersey document is that it places environmental justice within the framework of the presence of "communities of concern," "disproportionate environmental health stressors," and the "absence of environmental and public health benefits." The document also centers standardized criteria mapping to identify overburdened communities and Executive Branch action plans, which direct each agency's work to implement EJ and to establish measurable outcomes to reduce burdens and increase benefits. It is important for Virginia to address the historic discrimination that has led to disproportionate adverse impacts in minority and low-income communities from all sources of toxic pollution, lack of equitable access to public resources like uncontaminated drinking water, to community parks, and trees. Furthermore, each agency should adopt EJ principles and an equity framework for its practices and procedures as is demonstrated by NJ in their discussion of principles for furthering the promise of EJ.
2. The agencies should use a standardized methodology to identify environmental justice communities and populations, with census information used for **initial screening purposes only** because of the acknowledged unreliability of census data, including undercounting of minority populations, in particular, minority children. The methodology should include community input and allowances for the unreliability of available data.
3. No agency should consider local zoning ordinances or local decisions regarding special use permits as wholly sufficient by themselves for a determination of site suitability for proposed facilities or projects.
4. All agencies should be required to meaningfully consider cumulative impacts in the administration of their basic law or regulations. A helpful definition of cumulative impacts comes from HB 2074 in the 2021 Special Session I. It defines cumulative impacts as "the impact on human health or the environment that results from the incremental impact of a covered agency action when added to the effects of other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. 'Cumulative impact' can result from individually minor but collectively significant actions taking place over a period of time."
5. Whenever a facility or project is proposed, there should be an environmental justice analysis required that includes the historic burden of pollution on the populations most impacted by its construction and activities. Therefore, this review should include the cumulative impacts of existing pollution sources along with all of the cumulative adverse impacts related to the construction and operations of the facility or project.
6. All agencies should communicate to ensure that community members understand how to participate and what constitutes participation in public engagement processes including what requirements community

members must meet in order to have their voices heard. This should include a thorough explanation of the objective processes, requirements, and framework guiding agency actions and decisions.

7. The Executive Branch should work to ensure that localities do not retaliate against community members for participation in any public engagement activities with state agencies. Unfortunately, VCEJ has heard stories of community members being hesitant to express their opinions in agency proceedings because they are afraid of retaliation from the locality in which they live.
8. The Office of Just Energy Transition will increase the capacity of the Commonwealth to steward an equitable and just transition in communities negatively impacted by the downturn in the coal economy.

Funding Recommendation

VCEJ recommends that EJ be a priority funded in the state budget. It is the hope of the VCEJ that overarching EJ principles and general guidelines and a framework such as those identified in the New Jersey *Furthering the Promise: A Guidance Document for Advancing Environmental Justice Across State Government* document can be implemented within the Executive Branch right away rather than waiting for the full funding of all 34 FTEs in 24 agencies identified in the 2020 Environmental Justice Interagency Working Group Report. This would be important to efficiently use state resources, money, and time instead of replicating individual overlapping plans and assessments agency by agency. Funds identified from the HB 2074 fiscal impact statement available at <https://lis.virginia.gov/cgi-bin/legp604.exe?212+oth+HB2074FH2122+PDF> should urgently be included in the state budget and prioritized.

Agency Specific Recommendations

Before recommendations are given for individual agencies, we wanted to highlight some particularly positive examples from a few agencies like the Virginia Department of Transportation (VDOT), which has developed agency-specific EJ guidelines as well as supporting resources at: https://www.virginiadot.org/business/civil_rights_environmental_justice.asp. The Virginia Department of Health (VDH) Office of Environmental Health Services (OEHS) is also a strong example. In the OEHS section of the 2020 EJ Interagency Working Group Report, structural racism and the aspiration to include EJ in “every permitting decision and agency action” are discussed, which made that section particularly robust. The Department of Historic Resources has made enormous strides in working closely with African American community groups on ensuring access to regional directors and GIS mapping resources to document historic cultural resources which are not present in state and national historic resource archives. This department has truly become a resource to some non-professional local cultural experts.

Secretary of Natural and Historic Resources: Department of Environmental Quality (DEQ)

One of the purposes of DEQ is to “further environmental justice and enhance public participation in the regulatory and permitting processes,” as defined in section §§ 10.1-1182 and 10.1-1183 of the Code of Virginia.” In the 2020 EJ Interagency Working Group Report, DEQ states, “Environmental justice at DEQ does not just depend on the work of a few. This statewide effort is supported by all staff within DEQ’s Central Office and six regional offices, with full engagement of the agency’s executive team.” Yet, later in the document, DEQ offers no concrete examples of changes in regulatory permit processes across statewide daily operations to implement the agency’s now adjudicated responsibilities under existing laws and statutes or the Skeo report recommendations for public engagement and inclusive participation.

In practice, DEQ has made few changes to practices on the ground in EJ communities where environmental burdens continue to be felt in the everyday operations of gas infrastructure projects, mega-landfills, grocery distribution centers, etc. since the enactment of the EJ Act.

DEQ must do accurate site review for population density, buildings, including churches, schools, homes, and household demography rather than to rely on census tract data, use of EJ screen, which is merely a pre-screening tool, or applicant-supplied data.

Additional EJ designated funding to DEQ would be helpful, but DEQ needs no additional funding for EJ implementation instead it needs a shift in expert staff priorities. DEQ's past and present funding from taxpayer revenues continue to be disproportionately spent in expert staff hours to work with applicants on their permits, sometimes for years. Yet, in reality, the same expert staff need no additional specialized expertise to conduct EJ site review demography without reliance on census tract data or EJScreen, to review environmental health literature on specific toxic emissions, to follow Skeo recommendations, etc.

DEQ should stop creating scientifically unfounded limits on expert technical evidence given in public comment periods that will be considered by Boards in decision-making. DEQ's practice of cherry-picking public comment summaries to eliminate whole sets of site-related data by creating unscientifically proven limitations on what constitutes "allowed" permit evidence in decision-making -- was adjudicated against by the 4th Circuit decision in *Friends of Buckingham*. Despite being told by DEQ's Air Pollution division before the ACP compressor station air permit hearing that "any comments for the air permit that relate to environmental justice will not be read or summarized" for the Air Board, the EJ demographic and health data, the alternate source data, given in public comments were the bases for the lawsuit that overturned the air permit.

Nonetheless, recent DEQ's summaries of comments for water permits continue to create unscientific boundaries that do not exist for the impacts of air emissions on water. Or, in setting artificial boundary lines for project operations' toxic pollution sources DEQ deems allowed for Boards' decision-making as ending at building walls or beginning at mega-landfill driveways.

DEQ must not rely on locality permit decisions for the Board's requirements to investigate site specific data and for EJ review. As was made clear in the 4th Circuit decision in *Friends of Buckingham*:

"it is improper to rely upon a SUP as a substitute for an independent determination of site suitability under section 10.1-1307(E). See 9 Va. Admin. Code § 5-80-1230 "[C]ompliance [with zoning ordinances] does not relieve the board of its duty under . . . § 10.1-1307[(E)] . . . to independently consider relevant facts and circumstances.)" (P. 46)

Whenever an EJ community is identified as the most impacted, DEQ and the Air Board must not simply rely on NAAQS. They should address any disproportionate impacts compared to others living in the same area, rather than comparing to the whole state. We also support the site suitability review process for air permits be also applicable to water permits.

Secretary of Natural and Historic Resources: Department of Historic Resources (DHR)

DHR should review its outreach and public engagement procedures to ensure that the parameters of being historically significant are clearly communicated to the public and easily accessible. In regards to the permit application process, DHR's compliance director should review federal and state historical cultural resource surveys and archeological methods and data recovery to identify "inadequate methods and extent of data recovery" (Kirchner, Wegman's cultural resource survey, 2021) and to enforce the need for the EJ community expert archeological site visit to identify historic cultural resources in the Area of Potential Effects well before any federal and state permits are granted.

The DHR recommendations for additional site-based historic research, whether archeological, extant or standing resources, need to be sent to the Army Corps of Engineers, Federal Energy Regulatory Commission (FERC), etc. to be completed before federal permits and Virginia state permits are given public comment periods. This creates a process order that can withstand lawsuits for inadequate site review, giving months to be reviewed by experts in the community and historic preservation.

Project operations that will mitigate harm to the existing uses of historic cultural resources must be part of permit processes. As stated by John Eddins on behalf of the Advisory Council on Historic Preservation in the case of Brown Grove Rural Historic District:

“The Corps should consider how additional measures to resolve adverse effects could more meaningfully address the visual, audible, atmospheric, and physical intrusions into the setting, feeling and association of the historic district which is inextricably linked with everyday community life. To the extent that the effects to the setting and context of the historic district are not avoided and minimized, it is possible that the living historic district will be degraded to a static one and lose entirely its ability to convey its significance to anyone. Focusing solely on documentation of the resource does not address the potential for degradation of the historic district’s dynamic connection to the community” (P. 4, Sept. 21, 2021).

The State Historic Preservation Officer (SHPO) must not approve Memorandums of Agreement with federal agencies without working closely with the historic experts in these communities who have been designated “consulting parties” under the Historic Preservation Act, Section 106. MOAs are agreements by the developer to mitigate the “significant adverse effects” of the project on historic cultural resources and eligible EJ districts. These MOAs follow federal agencies, including FERC, Army Corps of Engineers, and other agencies’ permit approvals. The SHPO then would be repairing an injustice in this MOA process that the consulting parties are not required signatories to MOAs. Thus, currently they have no power over the decisions made by agencies or departments without their agreement.

Secretary of Natural and Historic Resources: Department of Conservation and Recreation (DCR)

DCR should pursue grant support to ensure increased outdoor access for all as well as to develop inclusive educational materials.

Secretary of Commerce and Trade: Virginia Energy *Formerly Department of Mines, Minerals and Energy (DMME)

DMME should articulate specific guidelines outlining how in keeping with the Virginia Clean Economy Act goals it will ensure economically disadvantaged or minority communities are not disproportionately adversely impacted. Oftentimes, EJ communities lack the resources to verify and check information coming from industry making it very difficult for the community themselves to predict potential impacts during permitting.

Secretary of Health and Human Resources: Virginia Department of Health (VDH)

We recommend that VDH integrate the Childhood Lead Poisoning Prevention Program (CLPPP) and the Office of Epidemiology more into its EJ efforts, working more closely with OEHS to ensure the tracking of

environmental health impacts. OEHS should have dedicated funding to expand its work and ability to investigate disparities. Increased capacity could be used for projects to improve well systems for low-income households, boost maternal health or investigate cancer clusters.

VDH needs to have additional funding to participate in regulatory permit processes by identifying the site-based environmental health issues to specific site's communities that will be most directly impacted. Because the VDH public health data is based in districts, often rural districts do not have accurate resident-based data because these are medically underserved. That is, most residents receive their medical care from medical providers' offices, hospitals, and skilled nursing facilities outside of the district in which they reside. Their data is then folded into that district's data and not their resident district's. Thus, site-specific health data needed to examine the adverse impacts of toxic pollution at a specific site can be unknown when depending on VDH records.

The household data used to uncover pre-existing health conditions in Union Hill for the Atlantic Coast Pipeline's air permit became significant to the 4th Circuit's decision. Unfortunately, too many times large data sets are inadequate to provide accurate site-specific community health assessments, which can result in adverse impacts being overlooked.

VDH is an agency that needs more dedicated funding, especially OEHS, to ensure the health impacts to environmental justice communities are studied by experts with site and community fieldwork. Without community-specific health data, largely rural EJ districts are being chosen by developers whose operations will bring disproportionate toxic pollutants to negatively impact the health of communities of color, vulnerable populations such as the elderly and children, and low income communities.

Secretary of Transportation: Virginia Department of Transportation (VDOT)

VDOT is the only agency that has created EJ guidance, which means that it already has much of the expertise to do site-based environmental justice reviews. VDOT should also focus on better enforcing their own EJ guidelines for all permitting decisions as well as agency actions.

VDOT's portion of the 2020 EJ Interagency Working Group report states, "When completing NEPA documents, the Federal Highways Administration (FHWA) and VDOT must determine if the proposed action results in a disproportionate and adverse impact(s) to minority or low income populations. If analysis reveals that the project would have a disproportionate and adverse impact to one or more EJ communities, the first step is to evaluate the project to determine whether the project's schedule, implementation, and/or final design can be altered to avoid the disproportionate and adverse impact(s)."

Toxic air emissions from new or expanded transportation projects should be thoroughly analyzed for their health impacts and, if found to disproportionately impact identified EJ communities, alternate sites must be considered. Special attention should be paid to PM_{2.5}, which has historically burdened and continues to burden communities of color no matter their income level as found by recent research available at <https://www.science.org/doi/10.1126/sciadv.abf4491>. Furthermore, the 4th Circuit decision for *Friends of Buckingham vs. DEQ and Air Control Board* cited the plaintiff's finding that "even EPA, when they established the standard back in 2013, stated that there's no lower limit for PM 2.5 exposure."

Additionally, VDOT states in the report that "VDOT's Environmental Division works with the EPA on how to assess/identify EJ populations through census data." Yet, the National Environmental Policy Act (NEPA) guidelines caution against using census tract data in EJ reviews, or to use for pre-screening purposes only, because census tract data can conceal smaller population clusters. Using both census tract and census block data can result in undercounting for communities of color, and

especially of children. A methodologically more accurate method are site-based community studies. VDOT should urgently implement the finding of the 4th Circuit Court that relying on census tract data by itself is insufficient.

VDOT must consider the possibility of disproportionate impacts in all projects, especially pollution. Thus, the agency should do far better public engagement with community experts and stakeholders and include the findings in environmental justice reviews.

Secretary of Education: Virginia Department of Education (VDOE)

VDOE should include the concept of EJ in the Earth Science curriculum for Grades 8 and 9. We recommend that VDOE reach out to the VCEJ for input during the next revision of the Standards of Learning. VDOE should also lead a review of all public school buildings throughout the state to ensure that all are in compliance with the latest Virginia Uniform Statewide Building Code as well as have good air quality standards. Through the COVID-19 crisis, we have learned the vital importance of inspections, regular testing, maintenance/repair as well as replacement, and upgrades to improve indoor air quality especially in schools. Some items that should be considered in the review are filters, purifiers, fans as well as the repair or replacement of windows and doors.

State Corporation Commission (SCC)

Although the SCC is not currently included in the Environmental Justice Interagency Working Group because it is an independent agency and not under the Executive Branch, it should be allowed to join. The impact of its decisions on EJ communities cannot be overstated.

Conclusion

VCEJ hopes that the Environmental Justice Interagency Working Group finds the suggestions and recommendations helpful. For communities across the Commonwealth, especially those who have been facing disproportionate impacts and environmental burdens for generations, action is urgently needed to relieve burdens, to ensure benefits, and to repair environmental harm felt by communities. The VCEJ will continue to engage with the Environmental Justice Interagency Working Group and encourage communities and advocates to keep monitoring agency actions and stay involved in incorporating EJ actions throughout the Executive Branch.

Recommendation:

- 1. Note on new Secretary of Natural and Historic Resources [no position] - concerns around environmental justice as a priority***
- 2. Office of Just Transition**
- 3. Moratorium on new landfills**
- 4. Continue the Interagency Environmental Justice Working Group to address environmental justice issues throughout the Commonwealth.**

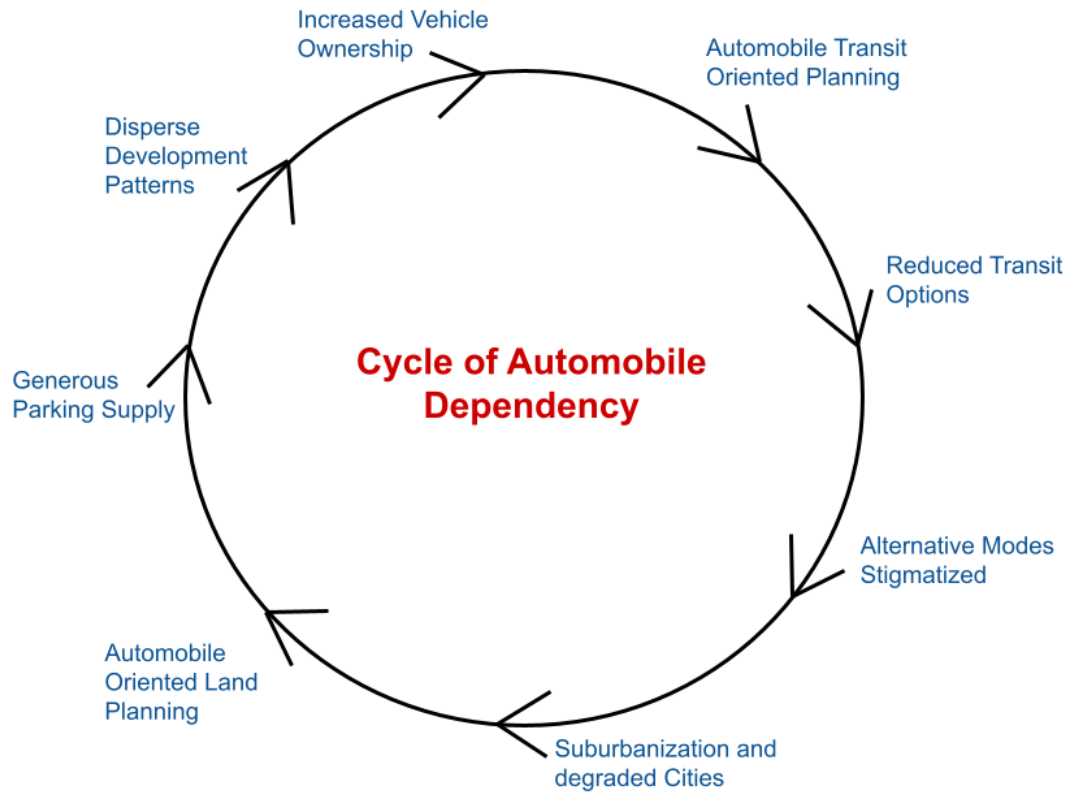
APPENDICES:

TRANSPORTATION

APPENDIX A: AUTOMOBILE DEPENDENCY FIGURES

Cycle of Automobile Dependency

Automobile Dependency and Sprawl



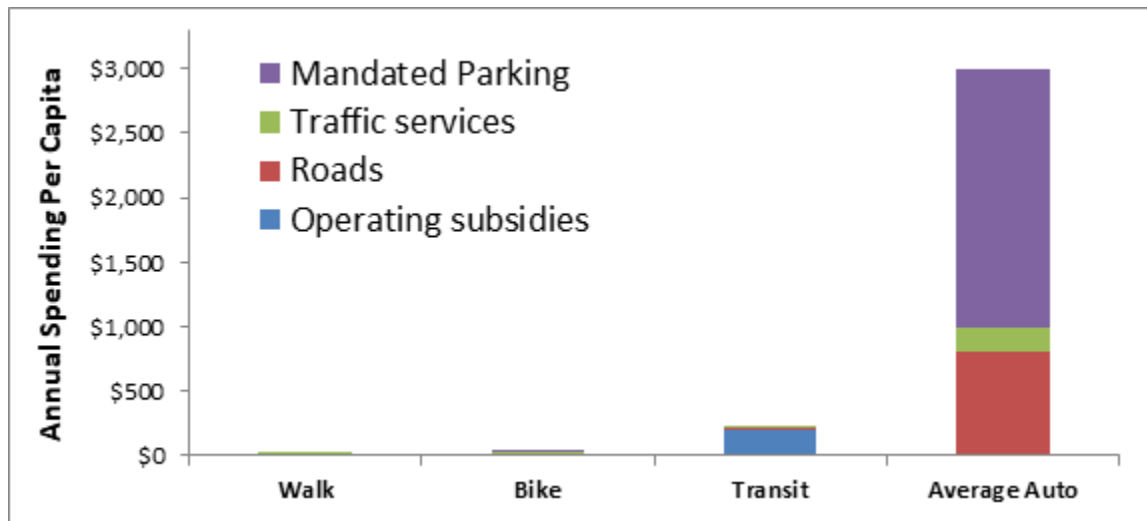
Note. Diagram displays the impact of current infrastructure practices that contribute to a reinforcing cycle of automobile dependency. In order to break this cycle, the Victoria Transport Policy Institute suggests prioritizing putting infrastructure in place that supports multi-modal transportation methods.

Diagram retrieved from: Litman, T. (1995). Land use impact costs of transportation. *World Transport Policy and Practice*, 1(4), 9–16. <https://doi.org/10.1108/13527619510101981>

APPENDIX B: TRANSPORTATION COST FIGURES

Figure 1

Annual Spending per Capita

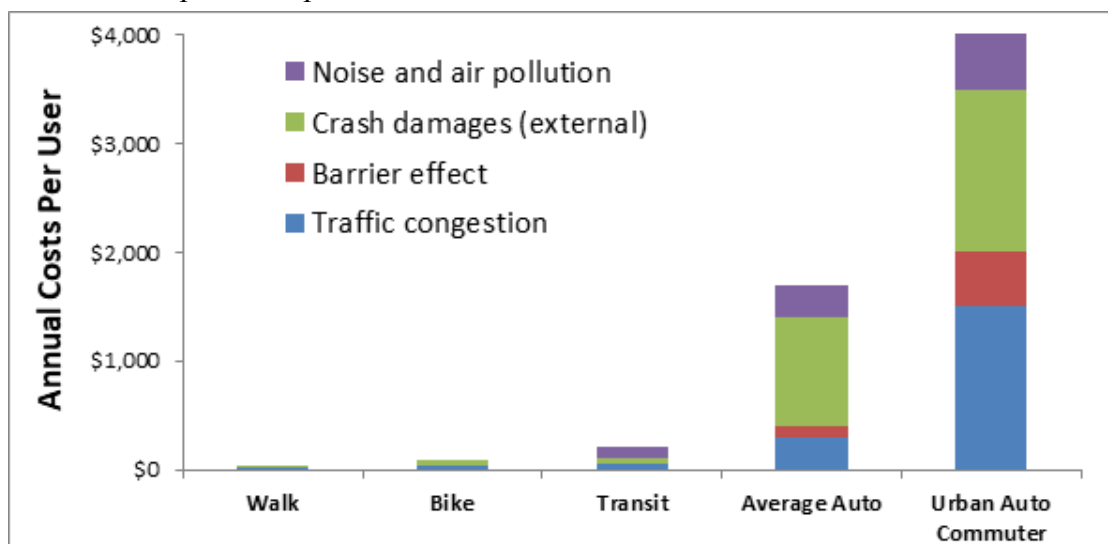


Note. This graph compares infrastructure investments for various modes. Auto investments receive 91% of annual spending per capita.

Graph retrieved from: Litman, T. (April 21, 2021). *Evaluating Transportation Equity*. Victoria Transport Policy Institute. <http://www.vtpi.org/equity.pdf>

Figure 2

Annual Costs per Transportation User

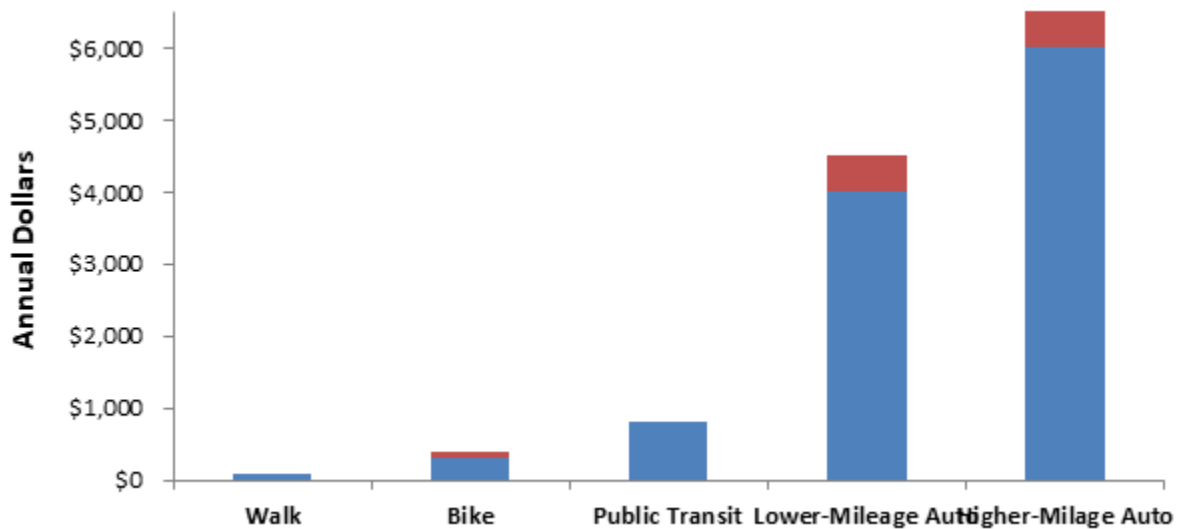


Note. As stated by the Victoria Policy Institute, “Transportation imposes various external costs on other people. (“Barrier effect” refers to the delay and risk that wide roads and vehicle traffic impose on walking and bicycling.)” (2021). This graph displays these external costs.

Graph retrieved from: Litman, T. (April 21, 2021). *Evaluating Transportation Equity*. Victoria Transport Policy Institute. <http://www.vtpi.org/equity.pdf>

Figure 3

Annual Expenditure per Transportation Type



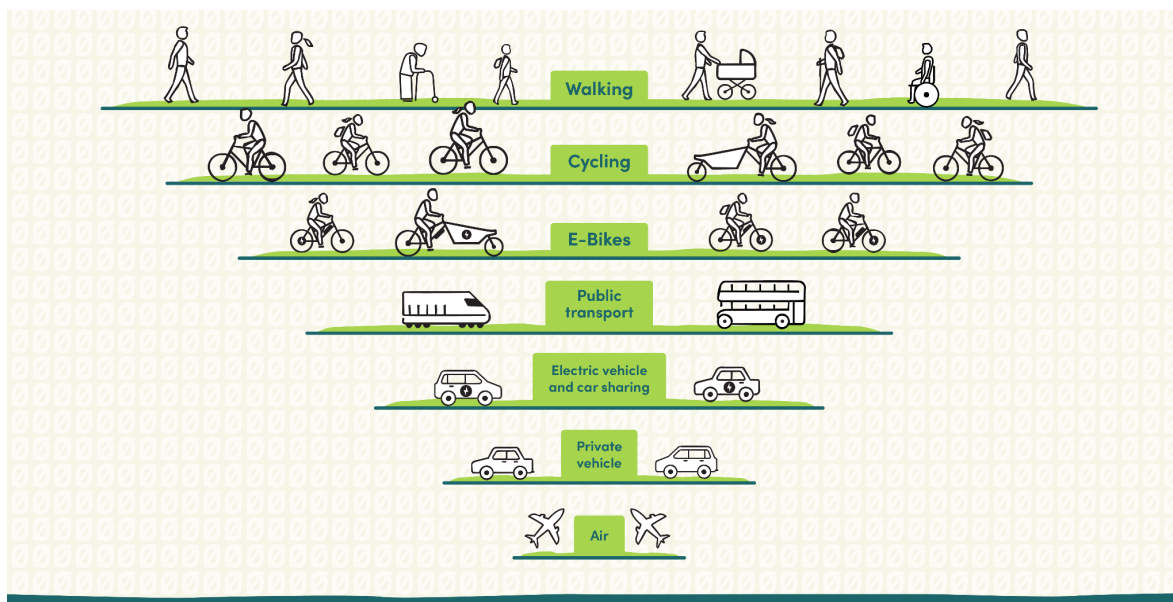
Note. This graph displays the costs associated with each transportation mode. Walking, bicycling and public transit are significantly more cost-efficient while automobiles are far more costly. The Victoria Policy Institute finds that automobiles “impose large, unpredictable costs” (2021).

Graph retrieved from: Litman, T. (April 21, 2021). *Evaluating Transportation Equity*. Victoria Transport Policy Institute. <http://www.vtpi.org/equity.pdf>

APPENDIX C: Hierarchy of Transportation Modes

Figure 1

Hierarchy of Transportation Modes



Note. Diagram displays the “Transportation Hierarchy Model” (Action Net Zero, 2021). The model provides individuals and city planners with a visual way of ranking the cleanest and most cost-effective transportation methods.

Diagram retrieved from: Action Net Zero. *What are my sustainable transport options?* (2021). <https://www.actionnetzero.org/guides-and-tools/sustainable-travel-options-transport-hierarchy/>

APPENDIX D: Jurisdiction with target to reduce personal Vehicle Miles Traveled (VMT)

Many jurisdictions have targets to reduce personal vehicle miles of travel (VMT) and increase use of non- auto modes (walking, bicycling, public transit, etc.) in order to achieve various economic, social and environmental goals. For example, Washington State requires 30% reductions by 2035 and 50% by 2050 (WSL 2008). British Columbia’s target is to reduce light-duty vehicle travel 25% between 2020 and 2030, and approximately double the share of trips made by walking, bicycling and public transit to 50% by 2050 (Clean BC 2021).

Minnesota’s goal is to reduce state vehicle travel by 20% by 2050 (Bellis 2021). The United

Kingdom has a goal that by 2030, half of all urban journeys will be by bicycle or walking (DfT 2020). Scotland has a target to reduce vehicle travel by 20% by 2030 (Reid 2020).

1) Clinch Coalition Recommendations

Recommendations by The Clinch Coalition to the Virginia Council on Environmental Justice, October 25, 2021:

Recommendations for Stronger Logging Regulations

- An application and permit process could be put into place.
- A NEPA-type process could be put in place to ensure state and federal listed endangered species be protected.
- Best Management Practices (BMPs) should be requirements, not recommendations.
- Loggers should have to follow more environmental laws other than the Clean Water Act.
- Logging impact on neighbors and communities need to be assessed.
- The Commonwealth should look in to Forest Banking for forest management.

Recommendations for Transparency of the Southwest Regional Recreational Authority (SRRA) and Enforcement of Environmental Regulations

- Core Issue: Many state authorities' operations in SWVA are shielded from public view and exclude citizens from decision-making processes
- SRRA does not routinely seek public comment for proposed projects, make trail development plans available for public review, or even publicly disclose the identity of its board
 - Clear guidelines are needed from the General Assembly establishing mechanisms for public input and requiring transparency in state authority operations
- Regulatory agencies are hesitant to enforce Virginia's environmental laws on state-funded projects, even when violations are discovered, since doing so would amount to the state engaging in enforcement action against itself.
 - The Commonwealth should clarify that environmental regulations apply to all public entities and ensure that enforcement for violations is consistently applied

Recommendations for Addressing Public Health

- Provide funding for research to advance the knowledge base related to the effects of the environment on the health of citizens of Southwest Virginia.
- Provide adequate funding and resources to regulatory agencies to address current and long-standing deficiencies in enforcement of environmental policies and laws.
- Bring environmental justice to Southwest Virginia!

2) Just Transition

Office of Just Energy Transition Proposal

Mission: The Office of Just Energy Transition will increase the capacity of the Commonwealth to steward an equitable and just transition in communities negatively impacted by the downturn in the coal economy. The Office will:

1. Develop a community of practice that facilitates **preparation**, during which the groundwork is laid for a successful transition by planning and beginning to implement strategies to assist communities and workers.
2. Provide assistance during **closure**, during which Virginia's remaining power plants and coal mines close down. This will be the period of maximum negative impact to workers and local economies.
3. Steward a **recovery**, during which workers and communities complete their transitions to a future after fossil fuels and other carbon-emitting economies. For Southwest Virginia, recovery must begin immediately to address decades of coal industry decline; for other communities, recovery can begin now as communities get a head-start on diversifying their economies and workers start planning early to take charge of their own futures.

The Need: The Virginia Clean Economy Act mandates that the Commonwealth transition away from carbon-emitting electric generation, putting further downward pressure on fossil-fuel industries already facing decline as the electricity sector decarbonizes. As Virginia and the country rely less on fossil fuels, workers and communities historically reliant on fossil fuel production and infrastructure will lose jobs and tax revenue, further exacerbating the economic hardships faced in these areas.

Coalfield communities have been experiencing the harsh reality of the declining coal industry for decades, and now more workers and communities across the entire Commonwealth will begin to experience this challenging economic transition. As we change the way we produce energy, Virginia has a responsibility to ensure that vulnerable communities are not left behind during the transition.

Action: The purpose of the Office is to (1) aid workers in the transition to new, high-quality, jobs, and (2) help communities continue to thrive by expanding and attracting diverse businesses, replacing lost revenues, and repairing the environmental damage of extractive industries. The Office of Just Energy Transition will collaborate

with the Just Energy Transition Advisory Board and create a Just Energy Transition Action Plan. The Office will commission a study regarding the effects of power plant and mine closures to inform the Action Plan in order to better assist workers and communities that will be adversely affected by the loss of jobs and revenues due to the closure of coal-fired power plants. The Advisory Board should include representatives of coal communities, labor unions, regional nonprofits, issue experts, and members appointed by the Governor. The Advisory Board should lead the drafting of the Action Plan, which must be developed in consultation with stakeholders in impacted communities, within two years after the establishment of the Office, and must be updated every three years. The Action Plan will address the Office's plans for each bullet listed below.

The Office of Just Transition is responsible for:

Administrative

- Administering the Just Energy Transition program and the development and implementation of the Just Energy Transition Action Plan for Virginia.
- In coordination with the Department of Energy, monitoring the timing and location of facility closures and job layoffs in fossil-fuel-related industries and making recommendations for how to most effectively respond to these economic dislocations.
- Engaging in administrative proceedings that are relevant to the purposes of the Office, including matters before the State Corporation Commission and Department of Environmental Quality.
- Developing realistic options for further state support of just transition strategies. Recommending to the General Assembly and Governor legislative changes that would allow the Office to better achieve its purpose.
- Administering a mitigation fund to provide assistance for communities facing closures, including assistance with loss tax revenues and wages, in coordination with the Department of Social Services, the Employment Commission, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the Department for Aging and Rehabilitative Service, the Economic Development Partnership, the Community College System, and the Department of Education.

Local Engagement

- Working with stakeholders in each impacted community to develop local plans and to inform the statewide Action Plan.
- Supporting the Just Transition Advisory Board.
- Targeting early successes in business start-ups, expansions, retention, and attraction.
- Empowering communities with resources to drive their own economic transitions.

Increasing Funding & Improving Programs

- Identifying funding sources and aligning regional, state, and federal programs, grants, and investments to assist local infrastructure projects and revitalization strategies.
- Identifying and funding environmental remediation efforts necessary to improving community health and attracting economic development.
- Working with state lawmakers, utilities, and mining companies to increase transition funding.
- Ensuring impacted communities have adequate health and social services to support a just economic transition, including access to education, transportation, health care, child care, mental health care, and addiction recovery care.

PUBLIC COMMENT SUMMARY

Virginia Council on Environmental Justice – Written Comments

February 18, 2019 - 10am-2pm

Renada Harris

804-503-0611

My name is Renada Harris, and I am here to confront the environmental injustice that threatens people who live in a predominantly African-American freedman community known as Brown Grove. As a Brown Grove native, I know the harms caused when elected, and appointed officials neglect the environmental issues that impact minority communities. As a child, I would ride my bike to my cousin's house down the street. But that's not the case anymore. Elders can't pass on generational wealth to their children because who wants to live next to a landfill? Wegmans grocery plans to build a 24 hr. distribution center in Brown Grove, which is already overburdened with a landfill, a truck stop, an airport, concrete and construction facility. Wegmans would mark the 6th industrial business planted in the middle of a family neighborhood.

Most Brown Grove residents have well water, and contaminated water, as we have seen in Flint, Michigan, can cause an abundance of health-related issues. The EPA celebrated Black History Month by publishing a report that finds black communities face dangerously high pollution levels. African Americans are more likely to live near landfills and industrial plants that pollute water and air. Because of this, more black Americans are three times more likely to die from exposure to air pollutants than their white counterparts.

1. Other impacts of the Wegmans distribution center include:
2. Disturbance of slave graves
3. Fumes from their fleet of trucks moving throughout the Brown Grove neighborhood daily
4. An estimated 2,864 additional vehicle trips per day
5. 24-hour noise and lights from the distribution center and truck traffic
6. Potential increase in accidents on a residential road

Records show that this construction will be the largest destruction of wetlands outside of the Hampton Roads area if approved. Without protecting the surrounding wetlands, roads like Ashcake will face excess rainwater, potentially flooding residential houses and making driving conditions unsafe for the community.

The Dutton and associates cultural resource survey recommend this site be avoided and undergo further research because history and artifacts were found and deemed eligible for the national registry of historic places. Authentic artifacts from the merry oaks tavern, which Patrick Henry frequently visited, were found. During Reconstruction and Jim Crow, Brown Grove school was 1 of 8 African American schools in Hanover County This land is full of things that need to be discovered and protected.

With no help from our elected officials who are supposed to represent us and with the Department of Environmental Quality not concerned with the environment's quality, we, the community, with zero budget, have turned our careers from hairstylists, counselors, and retirees to surveyors, scientist, and lobbyist...during a pandemic. With our supporters, we are putting pressure on the DEQ and USACE to do their jobs with this 2.7 million dollar budget.

For years, the Hanover County Board of Supervisors has ignored the community's concerns regarding this industrial gentrification and improper zoning so people can't build homes in the community. This historical community is overburdened with environmental degradation and one of the heaviest polluted neighborhoods in Hanover County.

Wegmans nor the DEQ have not met its burden to promote environmental justice through the Brown Grove community's meaningful involvement as required by Va. Code § 2.2-235. Meaningful involvement means that "affected and vulnerable community residents have access and opportunities to participate in the full cycle of the decision-making process about a proposed activity that will affect their environment. This is the true essence of environmental injustice.

Neither the Department of Environment Equality nor the US. The Army Corps of Engineers has conducted an appropriate environmental justice review to study the cumulative impacts of industrial encroachment on the community. Wegmans has minimized and devalued the oral history of Brown Grove elders, disregarding graves' existence on site. These activities are insufficient to meet Wegmans' EJ responsibilities, and the denial of Brown Grove's existence as an EJ community is ignorant of Hanover County's history, offensive and contrary to law. Even though Brown Grove is Mentioned in the African American Smithsonian museum, we are still trying to prove our existence of 150 years to the DEQ.

Davis Paylor, director of DEQ, stated in a webinar, "It's clear that we haven't done as good of a job as we should have done with communicating and connecting with the public, and that's not OK, We need to learn how to listen better and how to include and connect with folks better."

Hanover County approved of the project in December 2019, with the groundbreaking projected for the spring of 2020. The County notified the "church" but did not inform Brown Grove residents, many of whom do not attend the church. FIOA requests show that the developer and supportive parties met in secret for nearly a year to plan out the development with no community input. The only chance the community had to comment was after the developers had secured promises from Hanover County to change the zoning. Companies that hold clout with legislators and agencies can exploit communities of color with limited political sway or other economic prospects.

In a statement, Northam stated that establishing the Virginia Council on Environmental Justice would "ensure communities are directly involved in the decisions that affect them most and will help prevent vulnerable Virginians from being disproportionately impacted by pollution, climate change, and environmental hazards." This all sounds good, but where does our Governor stand on this? Although Gov. Ralph Northam established the Council, he supports Wegmans coming into a residential community. Of course, it will bring 700 jobs under his belt. He says "environmental justice is important" but also said, "Wegmans will be a good neighbor."

However, I believe the Council is here to do what's right because you genuinely care and will not be just another smoke and mirrors agency.

We ask you to push the DEQ & US Army Corps of Engineers to conduct a 3rd party Environment Justice study and Ask both DEQ and the State Water Control Board to defer any decision until the Corps of Engineers completes their upcoming NEPA Environmental Assessment review.

Brown Grove continues to organize and fight for the right to breathe clean air, drink safe water, and live our lives in the community our ancestors built without polluting industries knocking on our doors. With over 5000 signatures on our protect Brown Grove petition, it's clear the community opposes the project. It adds no value to the quality of life for the people that live here.

We are not willing to sacrifice our history and health for Wegmans or Hanover County profits.

Monica M. Esparza

804.363.3282

Thank you for your willingness to share.

https://us02web.zoom.us/webinar/register/WN_Ii-FwAzaQbi3aog_-U66DA

[Welcome! You are invited to join a webinar: On Current Watch. After registering, you will receive a confirmation email about joining the webinar.](#)

The Virginia Environmental Justice Collaborative (VEJC), Virginia League of Conservation Voters (VALCV), and other partners present, "On Current Watch," a series of online discussions to help amplify community voices speaking out about how industry and public officials are treating our communities in 2021, as well as to highlight and elevate strategies that have helped protect communities thus far. Citizens are seeking greater protections for air, water, and land and are calling for a more rigorous review of the degradation of living environments in terms of environmental injustice. Join us to help raise awareness about threats our communities are facing and learn about the consequences of environmental injustice on public health, the economy, and our environment.

us02web.zoom.us

Katie Whitehead

mkwhitehead@yahoo.com

I appreciate the Council's work and Virginia's recent efforts to ensure environmental justice. At the same time, I am fearful that a project in my area, Pittsylvania County, will slip through without a thorough environmental justice review and set a poor precedent.

You have probably heard of the Mountain Valley Pipeline – MVP, the large pipeline intended to deliver fracked gas to two Transco compressor stations in Pittsylvania County for distribution to the Southeastern U.S. Construction of this project in West Virginia and Virginia is currently halted, and essential federal permits have been revoked.

You may not know about the MVP Southgate Extension, intended to carry gas from Pittsylvania County to North Carolina. Despite great uncertainty as to whether the MVP mainline will ever be finished, the company wants an air

permit now to build a third compressor station in Pittsylvania County, next to the Transco compressors, a project with no purpose if the MVP mainline is abandoned.

I hope you can advise DEQ:

1. Don't rush the air permit review.
2. Identify environmental justice communities affected over the sixty years that Transco has operated here and at risk from a new compressor station.
3. Don't tell us, as DEQ is doing now, that a new compressor station won't affect air quality.
4. Don't allow industry to shut people up with facile assurances and money.
5. Teach people - what they've been exposed to and will be exposed to.
6. Bring us into the process.

Thank you.

VCEJ Meeting Comments

March 26, 2021

Madam Co-Chairs and Members of the Virginia Council on Environmental Justice,

Thank you for giving me the opportunity to speak before you today. I have addressed the Council in the past about my objection to the proposed Green Ridge Landfill in Cumberland County. Since first hearing about the proposed landfill, I have learned much about Virginia's Solid Waste Regulations, Policies and Permitting procedures. I would like to ask the Council to urge the Governor to consider issuing an Executive Order to suspend permitting for the construction of new and the expansion of existing landfills.

The Virginia Department of Environmental Quality's 2020 Annual Solid Waste Report estimates that Virginia landfills have sufficient disposal capacity for the next 20 years. It should be noted that DEQ only requires that Virginia's Solid Waste Planning Units project disposal needs for *no longer than 20 years*. Virtually all of Virginia's 71 Regional Solid Waste Planning Units indicate sufficient disposal capacity to effectively manage each region's waste stream for the next 20 years. Some of the largest Planning Units indicate that reserve capacity is available beyond the 20 year window.

The Virginia General Assembly recently passed SB 1319 (Hashmi) directing DEQ to establish and continue the Waste Diversion and Recycling Task Force which is charged with recommending more socially responsible and environmentally sustainable solid waste management policies and practices. The primary charge of the Task Force is to identify waste management alternatives in an effort to divert waste from landfills thereby reducing the need for additional landfill capacity. The deadline for the Task Force's report to the GA is November 1, 2022.

On Tuesday March 23rd, Governor Northam signed Executive Order 77 (Virginia Leading by Example to Reduce Plastic Pollution and Solid Waste) which directed the Secretary of Natural Resources to develop recommendations to reduce plastic pollution and solid waste. In EO 77, the Governor states that "it is critical that the Commonwealth focus on reducing its disposal of solid waste and diverting as much as possible from landfills..." He further states that the "Commonwealth must *significantly* reduce the amount of solid waste it sends to landfills..." The Plastic and Waste Reduction report from the Secretary of Natural Resources is due to the Governor by October 2021.

Given these two recent developments, it seems reasonable to ask that the Governor suspend the permitting of applications for the expansion or construction of new landfills in Virginia until such time as the General Assembly has had an opportunity to consider and act upon the recommendations of the Waste Diversion Task Force. I hope that members of the Council agree and request that the Governor issue an Executive Order to suspend the issuance

of Solid Waste Permits until 2022 at which time the General Assembly will have had the time necessary to review and act upon the recommendations of the Waste Diversion and Recycling Task Force. Thank you for your consideration of my request.

Respectfully
Kevin Halligan
Powhatan Va.

Virginia Council on Environmental Justice - Written Public Comments

May 11, 2021

Good afternoon Council Members,

My name is Jessica Sims and I work for Appalachian Voices, working to stop harmful and unnecessary fossil fuel infrastructure in Virginia. I am deeply thankful for the Council's recent letter urging Governor Northam to declare a climate emergency, and to establish a moratorium on new fossil fuel permitting. That position clearly reflects the urgency of the climate crisis we are currently facing and speaks to the continued injustice of introducing projects that harm the air, water, physical and mental health, and futures of Virginians. I also am thankful for the comments from the previous speakers Emily, Shannon and Dhivya + the issues they shared today.

I want to highlight the Environmental injustice issue occurring in Chatham, VA in Pittsylvania County, with the proposed Lambert Compressor Station. I know that in previous meetings you heard from impacted residents of the area and that Mountain Valley Pipeline has also been front of mind for the Council and I am also very thankful for that.

As you know, the proposed station would connect the incomplete, unneeded and violation-riddled Mountain Valley Pipeline to its Southgate extension. MVP would then intend to route the Southgate extension through Indigenous communities in Rockingham and Alamance Counties, NC. The compressor station in Chatham, VA would be an environmental injustice, placing an unfair toxic burden on the Bannister community in the closely surrounding area in Chatham. The site of the proposed Station is already home to multiple Transco compressor stations and the surrounding community is already impacted by toxic air quality. The concentration of industrial sites in the area places community members' health and safety at higher risk, as recently highlighted by a March 30 chemical fire which produced a toxic cloud and required that residents to shelter in place. The injustices are those experienced by those living the impacts of projects - that is what is at stake, not a lack of regulatory or lobbying access for project applicants that participate in polluting industries. What I'd like to also like to specifically raise today to the Council is that the Lambert Compressor Station air permit itself is procedurally unjust. I respectfully ask that the Council consider raising the issue of the purported urgency of permits that the DEQ places before Citizen Boards, in parallel with your request of a moratorium.

Specifically when there is ongoing litigation related to the project that precludes a full understanding of the viability of a project, or permitting for an interstate project is incomplete. The North Carolina DEQ has again denied a water permit for the Southgate extension. There is uncertainty that MVP mainline will ever be completed, and the VA DEQ has asked the Army Corps for a full year to provide adequate review of the recently requested Virginia Water Protection permit. This raises the issue of why Virginia is moving forward with asking a Board to review an air permit for a project that is not viable, disproportionately burdens communities, and conflicts with the decisions reached by neighboring states.

Thank you for any questions and concerns you can raise and continue to raise to the Administration, and thanks for the time to speak today.

--

Jessica Sims (she/her)
Virginia Field Coordinator
Appalachian Voices
812 E. High Street
Charlottesville, VA 22902
(804) 356-1228 cell
(434) 226-0589 office
jessica@appvoices.org

Virginia Council on Environmental Justice – Written Comments

June 24, 2021 - 10am-2pm

Lauren Landis

757.634.9567

Dear Council:

My name is Lauren Landis and I am the Hampton Roads Grassroots Coordinator for the Chesapeake Climate Action Network. I appreciate the Council's work addressing climate justice issues to this point and for taking the time to hear from me both in the meeting and we.

Since tuning in a bit late, I hope I address things that were not fully covered earlier. I will be speaking to the issues with the July 7th Air Pollution Control Board Hearing for the Lambert Compressor Station Minor Source Air Permit.

The first issue is that of the location. Holding a public meeting at a private hotel is completely inappropriate. This allows for the discretion of the hotel owners to impose whatever rules, on food and gathering, on folks who already have travelled a long distance to be present. This, alongside the increased security presence, is a form of intimidation and might make some community members feel uncomfortable sharing their grievances.

Secondly, I would like to suggest that folks retain the ability to cede their time virtually. This will ensure that the voices that need to be heard for longer periods of time (including technical experts and affected landowners) have the space they need to make their case.

I thank you for your consideration.

Jolene Mafnas

(703) 731-4907

My name is Jolene Mafnas and I am the Virginia Organizer for Food & Water Watch. FWW has around 28,000 members in the state, and so on behalf of my organization I wanted to highlight various environmental justice issues that we have been allies on. First is the Lambert Compressor Station in Pittsylvania county that will impact 4 environmental justice communities. Right now there is an air board meeting on July 7th which will be held at a private hotel and has been changed to only in-person participation when the expectation was virtual or a hybrid. These last minute changes require community members from Pittsylvania residents to take on the cost, time and stress of travel to a daytime meeting that is hours away. The Air Board Chair Roy Hoagland also wanted 2 days to allow for all testimonies to be heard but that has now been reduced to beginning at 1:00 on the agenda for this one day meeting. To make the public engagement process more fair for these communities, our organization urges DEQ to allow remote participation and that these meetings be held in state facilities/public buildings closer to the impacted area.

Another environmental justice issue I wanted to highlight is the C4GT gas plant. C4GT has failed to fulfill its air permit requirement for continuous construction and almost 30 organizations and Senator McClellan have challenged DEQ's tolerance of C4GT's efforts to circumvent an air permit renewal process that could have garnered more public engagement. FWW recently submitted a FOIA request to see communication between C4GT and DEQ. From the documents and emails received, C4GT has violated their air permit multiple times through late report submissions and in fact DEQ drafted an invalidation citing all the powers they have to revoke this permit but went forward with a warning letter without disclosing as to why this option was more appropriate. In the final warning letter, DEQ asks C4GT to submit a plan to construct and if in the case they're unable to move forward with construction in the next 90 days that DEQ would help facilitate the process. Considering this plant was approved before impacted residents were aware of the project, DEQ must be answerable to the environmental justice standards of today and revoke C4GT's air permit.

Finally, organizations on behalf of the frontline grassroots group Concerned Citizens of Charles City County approached the Air Board chair to reopen a 2019 DEQ permit for the Chickahominy gas plant, which will be a mile away from C4GT, because the permitting and hearing notification/outreach process severely failed to engage the impacted community. DEQ's response was a shameless affirmation that the process included "a robust environmental justice analysis" and stated "we believe that the environmental justice review DEQ undertook in the Chickahominy PSD permit process would have met all of the requirements of SB 406 and HB 1162 had they been in effect in June 2019." Therefore our organization asks this process be opened up and actually include robust engagement with the impacted community which our organization believes will demonstrate that this project should not go forward. Thank you.

Elle De La Cancela

(804) 723-0441

Dear Council:

My name is Elle De La Cancela and I am the Central Virginia Grassroots Organizer for the Chesapeake Climate Action Network. I would like to thank the Council again for the work they have done thus far and taking the time and space to hear from folks both in oral and written testimonial.

There are a few things I would like to bring to the Council's attention, echoing some of the comments that it has received already.

Firstly, there is the issue of July 7th Air Pollution Control Board Hearing for the Lambert Compressor Station Minor Source Air Permit. In addition to the fraught draft permit itself, which includes misleading and obscured information around both the delineation of the environmental justice communities and the cumulative impacts, the change in venue and type of hearing will limit the voices heard on the matter. The movement from a two day hybrid meeting to a one day in person hearing means that the burden of travel -- both time and money -- is unduly on those that would be impacted by the Lambert Compressor Station in Chatham. I have a few suggestions as to how to ameliorate these issues:

Have a hybrid option -- with DEQ livestreaming and the ability to call in by phone, similar to the process undertaken for the VA EJ Council meetings

Have the ability to comment after 5pm to accommodate those who work

Have the ability to submit written testimony and have it read by a DEQ official or a volunteer so it may be on the record

For future endeavors, I would suggest that the hearing is held in the proposed location

I would also like to highlight the Hazardous Waste Open Burn Permit awaiting decision for the Radford Army Arsenal Plant. An extension of the comment period was requested by several organizations but was denied, despite the fact that we are still in a state of emergency and extensions such as these are commonplace. Open burning is prohibited under Resource Conservation and Recovery Act and there have been studies done by both the National Academy of Scientists and the EPA that have outlined numerous alternatives for hazardous waste disposal. This proposed permit would expire in a decade, yet the public had only a few months to process the information. Additionally, folks have been told that a permit for an incinerator to accommodate the amount of hazardous waste will be submitted soon. How can the DEQ make a decision on open burning without all options accounted for? While an incinerator may not even be the best available alternative, it would be preferable to open burning. A study and a prohibition of open burning until that point would be helpful.

I appreciate your attention to these matters. Thank you for your consideration.

Jessica Sims

(804) 356-1228

Good afternoon Council Members. My name is Jessica Sims and I work for Appalachian Voices and I'm based in Richmond, Council members, thank you for your work, and for the opportunity to speak briefly today. I appreciate the accomplishments listed at the start of the meeting, but want to speak on an issue that needs significant improvement - meaningful engagement with and greater accessibility for public participation for communities impacted by fossil fuel projects within the Commonwealth. This is specifically reflected in the creation of y'all's Public Participation and Identifying EJ communities subcommittee, or where that may be housed, in the Emerging Issues Committee.

Specific to the part of the Environmental Justice act that grants access through the full cycle of decision-making processes, I wanted to flag for the Council, an upcoming Air Board meeting and its inaccessibility for the public.

As in previous meetings, speakers have talked about the proposed Lambert Compressor Station for the violation-riddled Mountain Valley Pipeline. The station is intended to connect to the Southgate extension. The compressor station in Chatham, VA would place an unfair toxic burden on the Bannister community in the closely surrounding area in Chatham. The site of the proposed Station is already home to multiple Transco compressor stations and the surrounding community is already impacted by toxic air quality. The concentration of industrial sites in the area places community members' health and safety at higher risk.

At the Quarterly April meeting, Air Board members expressed concerns about accessibility to the proceedings, and some members recommended scheduling at least part of the meeting for a time outside of standard business hours and making the meeting accessible for the large # of members of the public that weighed in during the comment period. This Board conversation highlighted the larger discussion around DEQ's ongoing assessment of public outreach and the efforts of the Air Board Public Engagement Committee to identify opportunities to provide meaningful engagement.

As described in previous comments, unfortunately, the DEQ has decided to host the meeting not in June, as discussed, but on July 7 as an in-person, one day only meeting during regular business hours. Given the ongoing health crisis, not offering a hybrid option limits safe public participation, + requiring hours of travel from those in the impacted area.

Limiting public participation runs counter to the DEQ's mission outlined in the agency's October 16, 2020 Environmental Justice Initiative to "proactively and authentically engage communities on issues and decision-making that could potentially affect their health and quality of life."

Yesterday 23 Orgs asked Director Paylor to offer hybrid options. I respectfully ask that the Council please ask Director Paylor and the Administration to allow a hybrid call-in option, livestream provided by DEQ and an after 5pm option to comment or submit written comments.

Also, at this time there is a periodic review of Public Participation Guidelines for the Air, Water and Waste Management boards and for the DEQ, which now has a public comment period. The comment periods were announced on June 21, but close soon, on July 12. As of this afternoon, zero comments have been submitted for any of these 4 public comment opportunities, which leads one to believe people are not widely aware there is an opportunity to comment. The purpose of the review is to determine if current regulations should be repealed, amended or stay the same. I think it would be incredibly helpful if the Council were to consider participating in the public comment period, and additionally, if it would be possible for the council to ask DEQ to please extend the public comment periods.

Thank you all very much for your work.

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- [11] Ignacio de Blas, Margarita Mediavilla, Iñigo Capellán-Pérez, Carmen Ducea, (Volume 32, November 2020,) *Energy Strategy Reviews*. The limits of transport decarbonization under the current growth paradigm.
- [12] Todd Litman (November 2021) Are Vehicle Travel Reduction Targets Justified? Evaluating Mobility Management Policy Objectives Such as Targets to Reduce VMT and Increase Use of Alternative Modes.

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[24] [provide reference for tribal law, and ongoing debate over Tribes having jurisdiction over non-members who commit crimes on tribal land]